

No. 12437

United States
Court of Appeals
for the Ninth Circuit.

JAMES ANTHONY ALLEN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
In Three Volumes
Volume III
(Pages 901 to 1353)

Appeal from the United States District Court,
Eastern District of Washington
Northern Division.

FILED

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(Testimony of Elwood V. Denney.)

Mr. Stocking: There's a \$10,000 diversion to Independence by Pilot in July or June, 1946.

The Court: There is a \$10,000 diversion claimed from the Pilot to the Independence?

Mr. Stocking: It's a check in evidence.

The Court: All right.

(Whereupon, the reporter read the last question and answer.)

A. Mr. Randall didn't give me copies of the audit. He made his working papers and his finished copy available for me to look at.

Q. And his finished what?

A. And his finished copy of the audit, a copy of which you have there, I believe, for 1946.

Q. You never got that?

A. He never gave us copies of those.

Q. That wasn't the question; I said when you talked to him about this audit did he tell you what the condition of the Independence was?

A. Yes, I questioned him about that.

Q. That's right, and you ascertained at that time what the condition of it was?

A. Yes, I ascertained at that time that a considerable amount of the 1,000,100 shares of Clayton Silver stock listed over here on the Spokane Stock Exchange which was owned by Independence Lead had been sold to provide funds, and [952] those funds from the sale of the stock had been charged in Mr. Randall's audit to the Montana Leasing Company.

(Testimony of Elwood V. Denney.)

Q. Yes, and who had sold that stock of the Independence Lead?

A. The stock was sold to Mr. Halin, to Mr. Chelty, and to Mr. Lilly.

Q. That isn't the question; will you listen to my questions?

A. Apparently by Mr. Keane.

Q. Yes, that's what I wanted to know.

A. Mr. Keane was in control of Independence Lead.

Q. Absolutely.

A. He was its managing director.

Q. Did you find out in your inquiry that he had sold a great amount of the Clayton stock belonging to the Independence Lead also?

A. I found I believe that 228,000 shares, or thereabouts, of Clayton stock had been sold.

Q. By Keane? A. Apparently, yes.

Q. Yes. A. To those three.

Q. And did you know the value of that stock, that two hundred and some thousand shares of Clayton?

A. Yes, it was valued at from 50 to 55 cents a share at the time it was sold.

Q. Something over \$100,000? [953]

A. That's right.

Q. Yes, and did you examine the minutes of the Independence Lead Company—— A. Yes.

Q. ——to find out what authority Keane had to sell that stock? A. Yes, I saw the minutes.

(Testimony of Elwood V. Denney.)

Q. Not to sell the stock, I'll withdraw that; to loan the money of the company?

A. Yes, there is some reference in the minutes, I believe. I'd have to see them to refresh my memory.

Q. I'll hand you Defendant's Exhibit J for identification, ask you to examine that, and state whether or not that is the minutes?

The Clerk: That's been admitted, Mr. Emigh.

The Court: I'm going to excuse the jury for a few minutes.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: Now, I did over the objections of the government permit some inquiry of Mr. Denney as to the Independence, assuming that the inquiry as to the Independence was to be shortened considerably. My inclination was that it was rather doubtful whether the defense was entitled to have the questions objected to answered at all, [954] but if this is a minor part of Mr. Denney's cross-examination, of course he'll not be fully cross-examined this week. I can see little materiality in this line of questioning of this witness. He did say that he examined the Independence and because of that examination he became suspicious. That doesn't allow us to make that the primary object of search, any more than if he had said that he happened to be made suspicious by some statement a man on

(Testimony of Elwood V. Denney.)

Riverside Avenue said; you wouldn't allow us to cross-examine him two or three days about that man, and I am very doubtful that this testimony is proper at all on cross-examination of this witness. I recognize the government is not now objecting, but the government did try to object, and is always in the position that an objector is after an objection before a jury has been overruled.

Mr. Emigh: Well, may it please the Court, this witness has——

The Court: He's produced no summary of the Independence. His testimony as to the Independence was only preliminary, as the reason he became suspicious, and I'm going to have to tell this jury if we continue with this cross-examination it doesn't make any difference whether Mr. Keane did or did not act properly with the Independence; the question is whether or not Mr. Allen is established by the evidence beyond all reasonable doubt to have violated [955] the law as charged. The fact that Mr. Keane may have committed the same offenses against a great host of corporations that it's charged he committed against the Pilot and the Extension is no grounds for cross-examining this witness as to the ramifications of Mr. Keane's affairs and conduct.

Mr. Emigh: Your Honor, I would like to make our position clear to the Court on why we are undertaking this examination to reach these points. The government has introduced a case here showing

(Testimony of Elwood V. Denney.)

a large amount of diversions from the Pilot and the Extension, and in the course of that evidence it has been shown that monies went to the Independence.

The Court: \$10,000 went to the Independence.

Mr. Emigh: The witness stated that in the first place the examination of the Pilot and the Extension started by an examination of the Independence. The jury has a right to infer from that evidence that what the witness discovered in the Independence led him to examine the Pilot and the Extension, and led him to consider the defendant in this case involved in the Independence situation.

The Court: Well, I don't think so. He said he was trying to find out why the statements of the Independence weren't filed. In the course of that he found that some [956] payments or advances were being made to the Montana Leasing. He then investigated the Montana Leasing, and he suspected transactions involving the Extension and the Pilot. Now, as I say, if you're going to spend as much time on material matters of cross-examination of this witness, proportionately to what you're spending on this very preliminary and incidental matter, we'll not be through with cross-examination of Mr. Denney this week.

Mr. Emigh: We'll undertake to do better than that, your Honor.

The Court: No, I say if you were going to spend as much time proportionately on the material mat-

(Testimony of Elwood V. Denney.)

ters as on the very minor matter of the Independence, we'll not be through by next week with Mr. Denney.

Mr. Emigh: Your Honor, I wish to state further that the audit of the Independence shows advances in 1943, 1944, 1945, \$73,760.18 in 1945, \$65,211.00 in 1944, \$25,301.00 in 1943.

The Court: I recognize that you have that in evidence, but this witness didn't put it in evidence. Why should he be cross-examined on it. As a matter of fact, I am doubtful that you had a right to do more with this witness than have him say what he did say, that Mr. Keane dominated the Independence. He's put in no evidence as to the Independence. I don't think he even put in any [957] evidence as to the \$10,000 that went to the Independence except that he may have mentioned that monies went to a number of persons and corporations including the Independence, in the summary of the Extension and the Pilot. The important testimony in this case of course is that a tremendous sum of money went from the Extension and the Pilot to the Montana Leasing and its successor, the Lexington, and that apparently some \$50,000 was checked out by Mr. Allen from that, and that is vital, whether or not Mr. Allen had any connection or no with the Independence. If Mr. Allen aided in diverting money from the Extension and the Pilot to the Montana Leasing, and if he profited by those diversions and then did the things he's charged

(Testimony of Elwood V. Denney.)

with having done, he's guilty, and I'm going to have to tell the jury that they're not to be diverted from the main issue in this case by a question of whether Mr. Keane violated the law with a number of corporations. There's been no objection, but the jury may come in. It is essential that the jury have its time taken up with evidence that is material, and not cross-examination that is a side path.

Mr. Emigh: Is that to be deemed a ruling of the Court?

The Court: I have made a statement. There is no objection. I am saying that it's important the jury be [958] given aid on the important evidence in this case, and that its attention not be distracted by side paths. The jury may come in.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

The Court: Counsel will understand the Court has not made a ruling. There's no objection before the Court. You may proceed.

Mr. Emigh: I think there's a question there.

The Court: All right, the question may be read.

(Whereupon, the reporter read the last previous question, as follows: "I'll hand you Defendant's Exhibit J for identification, ask you to examine that, and state whether or not that is the minutes?"')

Mr. Stocking: I'll object; I think that exhibit is

(Testimony of Elwood V. Denney.)

already in evidence, and I'll object; it's improper cross-examination of this witness.

The Court: Sustained.

Mr. Stocking: Did you sustain it?

The Court: Sustained.

Mr. Emigh: Oh, pardon me; I didn't hear your Honor. Exception.

Q. (By Mr. Emigh): Mr. Denney, you have been familiar with the preparation of this case which we are now trying ever since the year 1945, is that right, or 1946, I should say? [959]

A. The investigation started early in 1947, and I've been the investigator in the case, Mr. Stocking and I worked on it.

Q. And you have been working on it ever since?

A. Intermittently, yes.

Q. And do you work in Wallace on it?

A. I beg your pardon?

Q. Do you work on it in Wallace?

A. I have worked on it in Wallace and in Spokane and in Seattle.

Q. Now, when you went to investigating the case where did you get all the bank records in relation to the Extension Company?

A. They were obtained from Mr. Keane——

Q. Yes? A. ——and Mrs. Vermillion.

Q. And where did you get the bank records in relation to the Pilot? A. The same place.

Q. Did you in the investigation of this case get the bank records of any other corporation?

(Testimony of Elwood V. Denney.)

A. Yes, the Montana Leasing Company.

Q. And where did you get those?

A. Mr. Keane.

Q. And any other corporation?

A. We obtained some isolated checks and deposit slips, I [960] believe, in regard to Lexington from Mr. Keane.

Q. Isolated checks; what do you mean by isolated checks?

A. That is, isolated from the bank records.

Q. Yes?

A. Individual separate checks, which have been admitted here in evidence.

Q. Some of them have been introduced in evidence here? A. Right.

Q. You got those from Keane too?

A. Yes.

Q. You didn't get all the checks of the Delaware from Keane, did you?

A. The ones that we got that have been produced here.

Q. Yes, and those were for the month of August of what year? A. 1945, I believe.

Q. Did Keane produce for you any of the checks for the other months of that year?

A. I don't recall that he did.

Q. And the other records of the Delaware Company were in his office?

A. No; I don't recall; he didn't produce it.

Q. When you have examined witnesses in Wal-

(Testimony of Elwood V. Denney.)

place they've largely been examined in Mr. Keane's office, haven't they? A. No, they have not.

Q. On no occasion? [961] A. Yes.

Q. On several occasions?

A. The first hearings we had, as I recall, were at the Pacific Hotel, Mr. Stocking and I. The next hearings were conducted in the post office inspector's room in the post office building. As a matter of convenience, I believe the following day, because all of these voluminous records of the stock certificate stubs, the stockholders' ledgers and other records were in Mr. Keane's office, we went up there and took the evidence there and put these records in evidence in Mr. Keane's office. We arranged there to leave the stock certificate stubs of both Pilot and Lucky Friday Extension, and the stockholders' ledgers, in the possession of Beatrice McLean as a somewhat neutral party under instructions of the S.E.C. so that these companies would not be deprived or hindered in any way in conducting their business or transferring stock or keeping stockholders' records.

Q. And did Keane have any explanation why he only had the few checks of the Delaware Corporation, whose records were in his office?

A. We didn't ask him. We only asked him for isolated transactions which we wanted. We were not making an examination of the Delaware Company.

Q. You were not making an examination of the

(Testimony of Elwood V. Denney.)

Delaware, and [962] when you found some checks that you considered competent evidence here, you didn't ask him if he had any others?

A. No.

Q. Now, you have testified about the examining of witnesses. You meant at the formal hearings, didn't you?

A. These were the administrative hearings, persons under subpoena to the Securities and Exchange Commission.

Q. Do you ever examine witnesses not at these administrative hearings or these formal hearings?

A. We interview witnesses, of course.

Q. All right; is Keane's office a headquarters for interviewing witnesses in this case, or was it?

A. No, it was not.

Q. You think not? A. I know it wasn't.

Q. Did you have occasion to interview any witnesses there? A. No.

Q. In the last couple of weeks before this case started did you have conferences up there and have the witnesses brought to Keane's office for you to interview?

A. Mr. Stocking and Mr. Erickson and I were in Wallace a few weeks ago. We had some interviews there with Mrs. Vermillion and Mr. Keane—

Q. Yes. A. —in Mr. Keane's office.

Q. Some other witnesses, weren't there, too?

A. Mr. Hanson came into the office, W. H. Hanson, an attorney, to join in the interview in

(Testimony of Elwood V. Denney.)

regard to a payment on a note or some such thing. Is there anybody else you have in mind?

Q. Anybody else that you—how about Bea McLean, did you talk to her there?

A. We talked with Beatrice McLean in her own office over in the Callahan Office across the hall.

Q. And are those the only persons you interviewed in Mr. Keane's office?

A. I don't recall right now anybody but Mr. Keane, Mrs. Vermillion and Mr. Hanson in Mr. Keane's office.

Q. Mr. Denney, do you distinguish between treasury stock and promotion stock?

A. I see no connection between ordinarily the definition of treasury stock and promotion stock.

Q. You see no connection? A. No.

Q. Well, what is treasury stock?

A. Treasury stock is stock which has been issued by a corporation and later re-acquired in some manner or other. It is then, when it gets back into the treasury, gets back into the corporation, it is legally treasury stock.

Q. Well, what is investors' stock? [964]

A. I don't know; I never heard the term before. You mean it's stock which has been sold to the investing public? It must be stock in the hands of the public, if that's what you mean; I don't know.

Q. Do you know what vendor's stock is?

A. Vendor's stock is referred to as stock which is given to a person who might assign property to a

(Testimony of Elwood V. Denney.)

corporation. For instance in this case, in the Pilot, where Grismer and his associated assigned property to the Pilot, that 900,000 shares might be referred to as vendor's stock.

Q. And you've explained what attorney's stock is, that's for services by an attorney?

A. Well, yes, both in Pilot and Lucky Friday Extension stock was issued to the attorneys for legal services.

Q. Yes, and that would be true in any corporation; there's nothing special about the rules in relation to these two; that's attorney's stock?

A. Well, of course it's up to the attorneys; some attorneys accept stock for services, and some don't, I've found out, and sometimes it's referred to as stock to attorneys when they wish to take it for legal services.

Q. Yes, and what is the stock called that was offered to the public in this case? What's that commonly known as?

A. It was different in the Lucky Friday Extension. The stock that was offered to the public by Lucky Friday Extension [965] was treasury stock. The stock offered by Pilot to the public through the underwriters was authorized unissued stock, brand new stock which had never been issued before.

Q. Is that known as vendor's stock?

A. No, sir.

Q. Or promotion stock?

(Testimony of Elwood V. Denney.)

A. Neither. You're speaking of Pilot, now?

Q. That's right.

A. Pilot was authorized unissued shares sold to the public to raise money by the corporation.

Q. And that is limited to the stock described in the prospectus, that offering, isn't that true?

A. Under which company?

Q. Pilot.

A. Yes, the prospectus of the Pilot Silver Lead states that the million shares were authorized unissued stock, if I recall correctly. At least, that's the stock that was sold to the public.

Q. And that's true of the Extension also?

A. No, sir, it is not true of the Extension.

Q. Well, what stock was offered by the Extension?

A. Treasury stock.

Q. Treasury stock?

A. As distinguished from authorized unissued stock. The stock that was issued by Lucky Friday Extension, if you recall, [966] here are the facts: The authorized capital was three and a half million shares. 300 shares were issued to the three incorporators, 100 shares apiece. That left 3,499,700 shares. That stock then was issued to Joe Grismer for the assignment to the Lucky Friday Extension of those mining claims. Joe Grismer then donated back to the corporation some 2,270,000 shares, I don't recall the exact figure, it's on the exhibit, and then that stock that was donated back became true treasury stock.

(Testimony of Elwood V. Denney.)

Q. That's true treasury stock?

A. And Joe Grismer then retained in his name the 1,229,700 shares.

Q. And did not donate that back?

A. No, that was the net cost to the company for those mining claims.

Q. But that was all stock issued for consideration?

A. Yes. The stock became fully paid and outstanding at the time it was issued for the property. A portion was donated back; it became treasury stock, but not outstanding.

Q. And the Pilot stock was offered to the public as new stock? A. Right.

Q. Unpaid stock, in other words?

A. That's right, it was just merely authorized capital, prior to its sale to the public, one million shares.

Q. Now, I think you referred to the Grismer stock in your [967] testimony this morning, that is, certain shares came from the Grismer stock, and certain from the Johnston stock?

A. Yes. Are you talking about Lucky Friday Extension?

Q. Yes. Read the question.

A. I answered it yes.

Q. And the stock that came from Keane's stock, that you state was traced from Keane's stock, what kind of stock was that?

(Testimony of Elwood V. Denney.)

A. Lucky Friday Extension certificate number 15, 300,000 shares to F. C. Keane, charged to organization expense.

Q. And what kind of stock was that?

A. That was new stock.

Q. Certificate 16? A. 15.

Q. Never been issued before? A. Right.

Q. And that went to where?

A. Mr. Keane.

Q. An issuance to Keane for what?

A. The records show organization expense.

Q. For attorney's fee and organization, isn't that true? A. Right.

Q. That's right. What other stock do you trace there in the Lucky Friday Extension?

A. Certificate number 16, 200,000 shares to Elmer Johnston [968] for the same purpose.

Q. That was attorney's stock?

A. Attorney's fees and organization.

Q. None of that stock was treasury stock, was it?

A. No; new stock.

Q. And none of the Pilot stock which you traced was new stock, is that correct, which you traced through? A. Would you read the question?

(Whereupon, the reporter read the last previous question.)

A. All of the stock originally issued for all purposes of Pilot was new stock.

Q. All stock in any corporation, until issued for services or property, is new stock, isn't it?

(Testimony of Elwood V. Denney.)

A. That's right.

Q. Well, you tried to distinguish a certain kind of stock in the Pilot as new stock as I understand it, as distinguished from attorney's stock or vendor's stock or something of that kind.

A. No, I did not, that I recall.

Q. You said it wasn't treasury stock?

A. That's true.

Q. You said it was new unissued stock?

A. Far as I know Pilot never has had any treasury stock. All the stock issued, 2,770,300 shares, on this Exhibit 110, [969] is all new stock.

Q. And you traced out some stock this morning, and that wasn't any of that new stock, was it?

A. I don't recall what you have reference to, right now. Would you amplify that?

Q. Well, I don't know what exhibit it's on, but there wasn't any of that public offering that you have referred to traced out in these proceedings this morning, was there?

A. The only stock offered directly to the public by the Pilot Silver Lead was the one million shares——

Q. Yes.

A. ——at 12½ cents, to net the company \$100,000.

Q. And you didn't trace that out this morning, did you, in any of these transactions you were tracing this morning?

A. No.

Q. That's what I wanted to get at.

A. I've made no reference to tracing any of the

(Testimony of Elwood V. Denney.)

stock offered to the public in the Pilot out of that stock underwritten by the brokers.

Q. Well, what we want the jury to know, then, none of that stock you say was issued by the Pilot as new stock was sold by Allen; he's not charged with selling any of that, is he?

A. It seems to me your question is somewhat vague.

Q. Well, the question is asked. Will you answer it yes, or [970] no, or if you can't answer it, say so.

A. Well, none of this stock issued by Pilot in the first instance went to Mr. Keane—Mr. Allen, I beg your pardon.

Q. None of it did?

A. Mr. Allen does not show as a stockholder.

Q. That's right.

A. He doesn't show here as a stockholder in the Pilot.

Q. All right.

A. It shows that 900,000 shares went to Grismer for claims.

Q. Now, none of the treasury stock that was sold was owned by Allen, was it, in the Extension?

A. No, none of that original issue of stock was put in his name.

Q. That's right.

A. But treasury stock——

Mr. Emigh: Just a minute; we'll object to further answer.

(Testimony of Elwood V. Denney.)

Mr. Stocking: The witness has a right to explain.

The Court: Well, you have redirect if necessary.

Q. (By Mr. Emigh): Now, to get the record clear, did Allen any time have in his name any of the stock that was sold to the public in either case as original issue sold to the public?

A. There was no original issue stock in either company registered in the name of Mr. Allen.

Q. That's what we want to know; you have no records of his [971] having any of that stock in his name?

A. None of the original issue of stock was put in his name.

Q. Then any stock which he sold in this transaction is vendor's stock or attorney's stock, that's correct, isn't it, as defined by you? A. Yes.

Q. Have you had considerable assistance from Mr. Keane in the preparation of this case, Mr. Denney?

A. Mr. Keane came to our assistance after he had pleaded *nolo contendere*. We obtained additional records——

Q. Now, just a moment; speak up so we can hear you, will you please?

A. They can hear. We obtained additional information from Mr. Keane, and additional records, after he entered his plea of *nolo contendere*.

Q. Well, he'd been helping you all along, hadn't he, giving you cooperation in everything?

(Testimony of Elwood V. Denney.)

A. Mr. Keane in a sense admitted his guilt in this matter when I first talked with him about the Pilot and Lucky Friday Extension funds, and was cooperative——

Q. Yes.

A. ——during the entire investigation.

Q. And you have had him getting evidence for you, haven't you?

A. He has assisted in getting evidence at times.

Q. Now, isn't it true that you've had him talking to witnesses to see what their testimony would be?

A. I don't know much about that. Mr. Keane's conversations have largely been since he pleaded *nolo contendere*, with Mr. Erickson and Mr. Stocking.

Q. Since then?

A. Since that time. I don't recall that prior to that he gave us any assistance in the interviewing of any witnesses or in going out and getting any information for us.

Q. Well, since the plea and while this case has been being tried here in court have you and Mr. Keane and any of these witnesses been closeted together discussing the testimony?

A. Mr. Keane and Mr. Halin had an interview in our presence yesterday morning in the United States Attorney's office.

Q. And what was the nature of that interview?

A. The interview was in respect to whether or

(Testimony of Elwood V. Denney.)

not Mr. Halin bought the 200,000 shares of Extension stock from him or from Mr. Allen.

Q. Now, what was the purpose of having Mr. Keane and Mr. Halin both come there to your office for the purpose of that interview?

A. It happened inadvertently. We were talking with Mr. Halin, and Mr. Keane came in, and so we asked him to sit down and get in on this conversation here to see if we couldn't [973] arrive at a proper determination of who had this transaction with whom.

Q. And did you tell those witnesses they'd better get together on their statements, or words to that effect?

A. No, I did not.

Q. But those conversations did occur?

A. They got angry with each other, and I suggested that they cool off and let's sit down here calmly and see if we can't arrive at a proper answer instead of showing temper the way they did.

Q. That's right, "see if we can't arrive at a proper answer" that's just what you told them, and get together on this thing, wasn't that it?

A. No, it wasn't to get together at all; it was to arrive at what happened. I don't know what happened, only they knew.

Q. And weren't their statements diametrically opposed as to what had happened at that time?

A. They were.

Q. Yes, and you knew what their statements were?

A. That's right.

(Testimony of Elwood V. Denney.)

Q. And when they became angry you tried to get them to sit down and agree upon what their statement was what had transpired?

A. Not to agree on what it was, necessarily, but to try to refresh their individual memories as to the facts. [974]

Mr. Emigh: That is all, you may take the witness.

Redirect Examination

By Mr. Stocking:

Q. Did I understand your answer correctly to Mr. Emigh's question, Mr. Denney, that none of the stock which you had traced to Mr. Allen, and I believe you were talking about the Pilot stock at that time, was out of stock which had been of the original issue?

A. No, I believe I testified that none of the original issue in stock was put or registered in the name of Mr. Allen. Mr. Allen's name does not appear on this exhibit number 110.

Q. But what was the fact as to the tracing of Mr. Allen's—I mean the certificates that were identified with Mr. Allen in connection with their original certificates that were issued?

A. Well, I found that in taking off the records of the brokers here in Spokane and in Wallace that Mr. Allen sold almost one-half of certificates 13 and 14, representing 650,000 shares of Pilot stock, and got the proceeds for it.

The Court: What certificates?

(Testimony of Elwood V. Denney.)

A. 13 and 14.

Mr. Stocking: I believe that's all.

Recross-Examination

By Mr. Emigh:

Q. Well, now, is that original issue, or is that off of Joe Grismer's certificate? [975]

A. No, this is out of stock that was issued to Mr. Keane. We're talking about Pilot, now, are we not?

Q. That was Keane's stock originally?

A. Stock originally issued to Mr. Keane, certificate 13 for 280,000 shares, 14 for 370,000 shares.

The Court: 13 was how much?

A. 280,000; 14 is 370,000.

Q. And that had been transferred twice, had it?

A. It was stock which was transferred from 13 and 14 to certificates 1231 through 1250, and 1284 through 1286, 1330, 1331, 1374 and 1375. Those were direct transfers from 13 and 14, and certificate 272 also.

Q. Now, that was all part of Keane's attorney's stock, wasn't it?

A. It all came out of 13 and 14.

Q. Will you answer my question? Was that all part of Keane's attorney's stock?

A. Yes, it's all part of that stock that was issued to Keane for the Cincinnati and Phelan group of mining claims. It was not attorney's stock.

Q. And not attorney's stock?

(Testimony of Elwood V. Denney.)

A. It was not. It was vendor's stock.

Q. But it wasn't any part or portion of the public offering under the prospectus?

A. It was not a part of the one million shares which was [976] offered to the public.

Mr. Emigh: I'd like to ask another question on cross that I overlooked.

The Court: All right.

Q. I think you said that Keane had been, since entering his plea of *nolo contendere*, of considerable assistance to you, or something to that effect?

A. He has been of assistance to the Commission and the United States Attorney's office.

Q. And that's only since the entry of the plea?

A. I stated in addition to that that Keane had been cooperative in this investigation since its inception.

Q. Yes.

A. I mean the inception of the investigation of Pilot and Lucky Friday Extension.

Q. Did his attitude in that regard have anything to do with the fact the condition of the Independence wasn't pressed by the S.E.C., no action was taken by the S.E.C. in relation to the condition of the Independence? A. No, it was not.

Mr. Emigh: That's all.

Redirect Examination

By Mr. Stocking:

Q. What was the situation with regard to the Independence, since counsel has asked?

(Testimony of Elwood V. Denney.)

A. There was a probable lack of jurisdiction on the part of [977] the Commission over what happened in the sale of Clayton stock by the Independence Lead Mines Company.

Q. And what about the statute of limitations?

A. The statute of limitations had not run, but it was a question of jurisdiction.

Mr. Stocking: No further questions.

Mr. Emigh: That is all.

(Whereupon, there being no further questions, the witness was excused.)

The Court: Any further evidence?

Mr. Erickson: At this time the government rests, reserving the right to offer any exhibit that may have been overlooked.

The Court: The government rests subject to re-offering or offering exhibits which have been identified, is that it?

Mr. Erickson: Yes, which have been identified and not finally received in evidence.

The Court: All right. Any reason this jury should not be excused until tomorrow morning at 10 o'clock?

Mr. Emigh: Your Honor, for the purpose of the information of the Court, at the time the government rests we'll have some motions to make.

The Court: Well, I had that in mind. I said is there any reason the jury shouldn't be excused.

Mr. Emigh: No, but I wanted to advise the Court.

The Court: I recognize that. The jury is excused until tomorrow morning at 10 o'clock. The jury will keep again in mind the admonition of the Court. You're not to talk about any phase or element of this trial or any person, matter or thing connected with it with any person whomsoever or among yourselves, or allow any person to talk with you about it. You're not to read about it or listen about it. The idea is you're to keep open minds, prepared to hear what you may later hear. The idea is further you will keep open minds to hear the argument on each side after the evidence has all been completed, and be prepared to listen to the Court's instructions. It may be that after you've heard the Court's instructions as to certain phases that you will understand the importance of certain evidence that you've now overlooked, so the idea is for you to keep open minds, get no information at all about this case except in open court, and give none about it, about any phase or element of the case. Each one keep a good memory independently of others. Good night. See you at 10 o'clock tomorrow morning.

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: All right, the jury has retired. The government has rested subject to correction of the record [979] as to exhibits which have been identified and may not have been admitted.

Mr. Emigh: May it please the Court, the defendant desires to present a motion to the Court to strike a number of exhibits pertaining to transactions occurring subsequent to December, 1946, which will take a considerable time to go through this collection here and single out to direct our motions against. This part we would ask, in order to facilitate the matter, that we be permitted to take this motion up in the morning, and in the interim see if we can find what material exhibits we feel should be stricken or a motion should go to the striking thereof, to preserve the record as we see the situation of the defendant.

The Court: All right, counsel; that's one motion you wish to make, with respect to the striking of exhibits since a certain time in December, 1946?

Mr. Emigh: That's right, your Honor.

The Court: Now what other motions?

Mr. Emigh: The other motions will be motions for judgments of acquittal on each count respectively.

The Court: Well, counsel, I don't wish to be arbitrary, but nothing is ever gained by long and lengthy discussions of matters that the trial judge is settled in his mind about. From time to time objections have been [980] made about the elimination of certain exhibits after December, 1946. I think there is no merit in those objections. While the defendant has not put on his case and while the defendant has made no opening statement through

his counsel, it is rather plain what the defendant's position is.

The government's position in part, in brief, is that Mr. Keane and Mr. Allen entered into a conspiracy early in 1945 to the effect first, that they would organize certain property which came to be called the Extension, and that they would use the proceeds of the stock for their personal benefit, principally through the Montana Leasing; that they did organize the Extension and did use the proceeds of the stock of the Extension largely for their personal benefit or for the Montana Leasing, and that the Extension proving an insufficient source, that they then ratified and confirmed the conspiracy, and agreed to extend it to the Pilot, which they organized, and that they did use a substantial amount of the proceeds of each for their own benefit or for the benefit of the Montana Leasing, and that in addition, the funds of the Montana Leasing, instead of being used to bail out that concern, were to a large degree diverted for their own personal benefit.

Now, it's been suggested in cross-examination that [981] Mr. Allen was not a partner in the Montana Leasing, and that Mr. Keane was the one who dominated the Pilot and the Extension, and that he's an embezzler, an inebriate, and a perjurer. However, up to this time the evidence shows that contrary to the implications of cross-examination, that Mr. Keane's stock, whether it was attorney's stock or Cincinnati stock or organization stock, to

a large degree showed up into the bank accounts of Mr. Allen. It's been indicated that a large amount of the treasury stock proceeds of the one company and of the authorized issue of the other to the public got into the Montana Leasing, and that a large part of it got from the Montana Leasing to Mr. Allen.

Now, if Mr. Allen and Mr. Keane were in a loose sort of partnership such as Mr. Keane says, it's understandable how Mr. Keane's stock would be sold in such a way that Mr. Allen would get the proceeds, and it's understandable then how a certain share of the Montana Leasing Company monies would come to Mr. Allen, but if Mr. Allen was not a partner with Mr. Keane, had no connection with him at this time, it is exceedingly strange how Mr. Allen would get any of that money. What happened after 1946 can be of great assistance to the jury in knowing what the relationship was before 1946, in December, so that what Mr. Allen did as to stock after December, 1946, that had originally come [982] to Keane before December, 1946, is very pointed in the inference it allows as to the truthfulness of what Mr. Keane is saying and as to the falsity of the inferences on cross-examination.

Now, it may be that after Mr. Allen has explained, it will be found how it happened he got all this money, but at the present time, regardless of how bad Mr. Keane may be, it would appear at this time that the jury is entitled to find that Mr. Allen was profiting out of whatever kind of an association he had with the evil Mr. Keane, so that

exhibits after December, 1946, can be very material in determining whether or not there was an unholy alliance between Mr. Keane, confessedly evil, and Mr. Allen.

Aside from that, the motion it seems to me has no real merit for the reason that under the evidence the jury has a right to find that Mr. Allen and Mr. Grismer were conspirators, and certainly that conspiracy, if there existed one, didn't end in December, 1946. It might have become more active and ripened more. The government has alleged that Mr. Grismer, Mr. Allen and Mr. Keane were three conspirators. There is much in the evidence that would indicate that Mr. Keane and Mr. Allen were the conspirators and that Mr. Grismer was a dupe. However, a dupe can be a conspirator. Usually a dupe who is a [983] conspirator gets little of the proceeds, and under the evidence the jury would have the right to believe that Mr. Allen and Mr. Keane together took advantage of Mr. Grismer as a dupe until December, 1946, at which time Mr. Allen monopolized the advantages of Mr. Grismer.

I'm saying these things because at this stage of the proceedings I have to consider as true all of the evidence produced by the government, not only the evidence is true, but I have to interpret in favor of the government all reasonable inferences to be drawn from that evidence. In addition to that, at this stage of the proceedings if there's contradictory evidence or evidence that permits of contradictory inferences, I have to consider as correct the con-

traditions most favorable to the government and the reasonable inferences which are most favorable to the government, and so I say that looking at the testimony that way the jury would be entitled to find from this evidence as it now stands that Mr. Keane and Mr. Allen were the primary conspirators, that Mr. Grismer was the dupe of both until December, 1946, and thereafter he became the dupe of Mr. Allen, and that Mr. Allen while pretending to have no interest or connection with Mr. Keane, was actually associated with him in some sort of an unholy partnership as evidenced by the money that he got, which is very difficult to understand if he had no connection with the stock, [984] so that I think you can make your motion as to certain exhibits, stating the time. I'm going to deny them on the basis of the date of December, 1946, being the end of any conspiracy, and even if it were the end of the conspiracy the acts of Mr. Allen or the advantages he obtained with respect to the Pilot or the Extension or the Montana Leasing are of evidentiary worth to aid the jury in determining the truth.

The Court must take knowledge of the fact that embezzlers sometimes tell the truth. The Court realizes that perjurers sometimes tell the truth, and the jury has the right to believe that regardless of how they may condemn the acts of Mr. Keane, the jury has a right to believe that those evil acts of Mr. Keane were partnership acts, and that Mr. Allen while concealing his identity was profiting by

Mr. Keane's activities, and therefore in effect I'm telling counsel that unless there is some situation not pointed out to me, that I'll have to deny the motions for acquittal and will have to deny motions to strike evidence on the basis of referring to a period after December, 1946.

Now, nothing that I've said here indicates that I mean that Mr. Allen is guilty. I'm merely ruling that under the rules of law, that the jury has a right to hold him guilty; even on the evidence as it is now the jury [985] would have a right to acquit him if they didn't believe any of the evidence against him, or didn't believe it to the extent that they were satisfied of it beyond all reasonable doubt, and certainly after the jury has heard all the evidence of Mr. Allen they may think that he's given explanations that satisfy them actually that he's innocent, or they may think that it's very doubtful that he's innocent, but that they are not convinced beyond all reasonable doubt that he's guilty. I've said this last so that it will be understood that I'm not passing at this stage of the proceedings on the guilt or innocence of Mr. Allen, but I'm merely saying it does not seem to me that either motion suggested is a motion that can be granted. In other words, I would be taking away from the jury those things that the jury have the right to determine.

Now, for the sake of your record, you may refer to those exhibits and make your motions, and do that tomorrow. You may expect to have them overruled. I'm not anxious for long argument, because

I've been having this case argued to me on pretty near every objection made as to evidence from its inception. There's very little argument that can be made that is not repetition. I would suggest that we meet here at 9 o'clock tomorrow morning, if you wish, for the sake of making your [986] record. If there is some particular matter that I've overlooked of course I want you to call my attention to it, and if the ground of the motion is meritorious I hope I will appreciate it.

Mr. Emigh: Your Honor, I think in view of the statement of the Court as to both the subjects on which motions will be addressed, the matter can be disposed of, both matters, inside of half an hour; it won't take an hour, because in view of the Court's statement, what we desire to do is to preserve the record and to preserve our position in the matter, and in that regard, your Honor, saving the clerk's time for us to be poring over these exhibits, if the Court would entertain a general motion addressed to exhibits admitted and to which objection has been made relating to matters occurring subsequent to November, 1946, as a general motion without specifying each specific exhibit, that would save a great deal of time and we believe would preserve our record.

The Court: You can make such a motion, and I will receive it. I'm saying that if there should be some particular specific exhibit after December, 1946, that for some reason is subject to an objec-

tion quite apart from what the other exhibits are, that I would be apprised of that.

Mr. Emigh: Well, we wouldn't intentionally do anything [987] like that. We have intended to preserve our record because we have a theory that the conspiracy had terminated.

The Court: I recognize that, counsel, and ordinarily I'd say that what I had announced since the jury retired would be apparently arbitrary, but I've been thinking of these matters from the time the case started, and felt that instead of doing the defendant and his counsel an injustice, it was better for me to tell counsel first what my view was, so that if counsel had any particular thing in mind that has not been presented, they can, and I'll meet with you at 9:30 tomorrow morning, or 9 o'clock tomorrow morning. [988]

* * *

(Whereupon, at 4:55 o'clock p.m. the Court took a recess in this cause until Wednesday, June 15, 1949, at 9:30 o'clock a.m.) [989]

(Spokane, Washington, Wednesday, June 15, 1949, 9:30 o'clock a.m. Eighth day of trial.)

(All parties present as before, except Mr. Etter and Mr. Cullen, and the trial was resumed.)

(Whereupon, the following proceedings were had without the presence of the jury and one alternate juror.)

Mr. Emigh: May it please the Court, the defendant James Anthony Allen, at this time, and for the convenience of the Court, files his motion to strike exhibits and testimony, in written form, and I may state that a copy of this motion, a carbon copy, has been handed to the reporter, and we ask that it be made a part of the record of this case. This is the motion that we stated last night and we present this morning, and for the convenience of the Court we are presenting it in this form.

(Reporter's Note: Defendant's motion to strike exhibits and testimony is included in the record as a part of the Clerk's transcript of pleadings in this case.)

The Court: The motion to strike exhibits and testimony presented in writing has come to the Court's attention. Said motion is overruled and denied. Exception noted. It may be filed by the clerk.

Mr. Emigh: Now at this time, may it please the Court, [990] and upon the denial of the motion just presented, the defendant James Anthony Allen, for the convenience of the Court, presents his motion for judgment of acquittal in writing, and states that a carbon copy of this motion has been furnished to the reporter, and we ask the motion be made a part of the record in this case.

(Reporter's Note: Defendant's motion for judgment of acquittal is included in the record as a part of the Clerk's transcript of pleadings in this case.)

The Court: Your motion for judgment of acquittal presented in writing in behalf of the defendant has come to the Court's attention. Such motion in its entirety and as to each and every count therein mentioned is overruled and denied. Exception allowed, and the clerk may file same.

Mr. Emigh: That disposes of the motions which we intended to file at this time.

(Whereupon the Court checked with counsel on the exhibits admitted and not admitted at this point in the trial.)

The Court: Is there any reason that we shouldn't be at recess until 10 o'clock, the time fixed for the jury to come in? I assume, and I'm saying this before the jury comes in, I assume that the defense counsel is going to make an opening statement. Such is not required. Does [991] defense counsel expect to make an opening statement?

(Mr. Etter and Mr. Cullen now present at the trial.)

Mr. Etter: Yes, your Honor, we do.

The Court: All right, that's one. I assume, without of course knowing, that Mr. Allen expects to testify?

Mr. Etter: That's correct.

The Court: Even before you say correct, it's not essential at all for the defendant to notify the Court as to whether he is going to testify, and even if the Court was notified as to what he's going to do, he has the right to change his mind completely

(Testimony of Elwood V. Denney.)

without advice, but I would expect to tell the jury when they came in, if satisfactory to defense counsel, that defense counsel would make an opening statement; is that satisfactory?

Mr. Etter: That's right, your Honor.

The Court: And in your opening statement you of course can outline what witness or witnesses you expect to take the stand. The Court will be in recess until 10 o'clock.

(Short recess.)

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.) [992]

The Court: Members of the jury, the government has rested, which means that it has put in the evidence that the government desires to present in its case in chief. Counsel for the defendant may now, if they choose, make an opening statement to you. Such opening statement by the counsel for the defendant is similar to the opening statement which you heard in the beginning of the case made by Mr. Erickson for the government. That is, that opening statement was merely an outline of what the government expected the evidence would show. It was not evidence, it was not argument; it was not intended to be considered by the jury as more than an outline of what might be presented so that the

jury would better understand the evidence when and if it were introduced. The defendant's opening statement likewise is not evidence; it's not proof, not intended to be argument, but it is your duty to pay careful attention to this opening statement so that you will better understand the evidence which may be presented by the defendant. All right, counsel.

Defendant's Opening Statement

Mr. Etter: May it please the Court, ladies and gentlemen of the jury. As his Honor Judge Black has informed you, this statement that I'm going to make is termed an opening statement, and in brief will be a statement of what we expect to prove on behalf of the defendant [993] Allen.

As you recall, the government has rested its case after calling all of its witnesses to testify to the claims made in the counts in the indictment against this defendant, and as you're listening here you realize they have attempted to show by those witnesses that the government's counts laid in the indictment as against the defendant are properly proved at least by the testimony which they have introduced.

It is my purpose now to, as I have said, make the opening statement and to state to you what we expect to prove in this case. Our evidence and testimony will show that the defendant in this case was and has been engaged in mining and in the operation of mines for a number of years, and that he began his operation of mines and in the mining business

somewhere in and about the year 1937. We will show furthermore that his first mining operation in which he participated to any extent was the organization and operation of the Callahan Consolidated Mine, to which reference has been made here in the testimony.

The evidence will on behalf of this defendant, ladies and gentlemen, further show that Mr. Allen became interested with a number of people who owned various and numerous mining properties in the area to which reference [994] has been made during the trial thus far, and that the mines and the ownership of mines related to properties in the vicinity of the Pilot Silver Lead Mines, the Lucky Friday Extension, the Independence Lead Mines, the Vindicator, the Hibernia, Gold Hunter, and other mines separated and adjacent to each other in the area to which most of the reference in this trial has been made. We will show furthermore that since the early operation and engagement by the defendant Mr. Allen in the mining operation, that he has for some time envisaged and visioned a cooperative development of this entire area, and that for a great number of years he has worked toward that end in his negotiation with the various ownerships of the properties to which reference has been made; that in the pursuit and culmination of this idea Mr. Allen has dealt with a great many people not only in this area but in Chicago and the east, where the ownership of some of the property is vested.

We will further show that the defendant himself has been and was interested in properties in Neihart, Montana, to which reference has been made here by designation of the Montana Leasing Company and the Lexington Silver Mines, Inc. We will show that so far as those properties are concerned that they have been great producers of large values in metals. We will further [995] show in this case, ladies and gentlemen, that Mr. Joseph Valentine Grismer, Joe Grismer, was employed by Mr. Allen while Mr. Allen was the superintendent of operations of the Callahan Consolidated in Wallace, Idaho, and that Joe Grismer had at times invited Allen to participate in mining ventures and property in which Joe Grismer was interested, and that he had on numerous occasions throughout a long acquaintance called upon Mr. Allen for assistance in problems that related generally to the mining operations.

The evidence will further show so far as this defendant is concerned that certain individuals, and particularly John Sekulic, proposed the organization of a mine company known as the Lucky Friday Extension Mine, and that Mr. Sekulic claimed that a great deal of property could be developed, and that he and others associated with him did propose that such property as he had in mind for development be developed through a central shaft in the Lucky Friday Mine, to which reference has been made here on numerous occasions as the Big Friday, as distinguished from the mine directly concerned

in this particular action, the Lucky Friday Extension. I should like to advise, and I think you probably know, but in the swirl of testimony as to the mines, that the Big Friday is precisely and exactly the same mine as the Lucky [996] Friday. Now, we want to show you that at that time the Big Friday treasury was exceedingly low, and we shall show that there was on hand so far as assets at the time, and pending obligations, at the time of the organization of the Extension, a very, very small amount of money in the Big Friday treasury. We will show at such time as the organization of the Lucky Friday Extension began and was culminated with the signing of contracts, cooperative contracts between the Lucky Friday and the Lucky Friday Extension, that shortly thereafter there was a rise in price of stock, and not only that, but there was a great deal of development so far as the Big Friday was concerned, and that this development reached the extent that there was about four hundred feet of shaft driven with money secured from loans arising out of contract obligations with the Extension Mine, and that likewise the stock of all of the properties in that particular area, not only the properties of the Extension, but the properties of various mines in the area, rose during that period of great and sharp demand upon the stock market here in the metals market as indicated by the prices in the Standard Stock Exchange.

Now, we will further show in the evidence that Mr. Allen and Mr. Grismer had for many years had

an arrangement, if you call it that, at least they had exchanged [997] stocks in various enterprises in which both of them were interested, and that as a matter of fact there had been stocks loaned between them at various times, and that by this arrangement over a period of years and at the present time, and at the time of this indictment, Mr. Allen had turned over to Mr. Grismer and had paid to Mr. Grismer many hundreds of thousands of shares in various stock in various mining companies in which the defendant Allen had held stock, and we will show furthermore that Grismer did propose and did agree over a period of time to, and did give to Allen different shares in exchange for shares which Mr. Allen had, in which he desired to have an interest, and as a matter of fact that arrangement was operative for a good many years.

We desire likewise and will endeavor to show you that at the time of the organization and the time Mr. Allen was superintendent of the Callahan Consolidated Mining Company, that he consulted with Mr. F. C. Keane on numerous problems that pertained to the operation and building of a mill and the acquisition of property by the Callahan Consolidated and to its entering into contracts with various other companies in the area. We will further show that he discussed with Mr. Keane over a period of years from his first acquaintance the matter of different mining problems in and about Wallace, and likewise [998] discussed with him many times the question of the central development idea which he had in mind.

We will show that he not only contemplated that during his discussions with Mr. Keane, but made several trips to the east to discuss it with the owners of what was known as the Gold Hunter property. We will show too that at the time of Mr. Allen's acquaintanceship with Mr. Keane it was a business acquaintanceship, and at that time Mr. Keane was active in mining circles, and was not only an attorney for various mining companies and held retainers, as he told you he did, but likewise he was associated in the ownership and direction of several outstanding mines in the area, and he was on several occasions a member of the board of directors, and in fact he was a member of the board of directors of the Big Friday Mine at the same time it was proposed that the Extension be formed and that the cooperative contract or agreement be entered into, and that during the progress of these events he continued and was through most of the events set up in the indictment a director in the Big Friday Mine as well as being the promoter and dominant factor in the organization of the Extension.

Now, we shall show furthermore that on numerous occasions during Mr. Allen's acquaintanceship with Mr. Keane there was discussed the development of property [999] which had been closed down, at Neihart, Montana, but which was located in a very favorable metals district, and which had been operated for a long time, and that the operation in Neihart was a complete operation with a completed mill and various structures, bunkhouses, and that it

is of a market value almost in excess of \$100,000; it was an operating company, it wasn't just a hole in the ground over in Montana.

We will show furthermore that Mr. Keane advised Mr. Allen that so far as the development of the Montana property was concerned, that Independence Lead Mines Company, of which he was then president, had on hand considerable money and likewise considerable stock of value which Independence owned and had in its treasury at that time in other mining companies, particularly the Clayton Silver Mines, and he likewise informed him Independence had in the past made investments in other mining companies which had proved profitable, that they had likewise, as testified by Mr. Keane, loaned machinery and pipe to various mines in the area, and it was a practice to operate in that manner because they had not provided for their own so-called deep development program as yet. We will furthermore show that he stated that the investment in Neihart should be an advantageous investment not only so far as Mr. Allen was concerned, and his interest in the property, [1000] but likewise so far as the Neihart property was concerned.

We will show further that he totally relied on such representations made to him at that time, and we will show that so far as Mr. Keane was concerned, he asserted that because of the investment of funds he intended to make in the Neihart property, that he considered that any direction of the

property should remain in him so far as administrative and legal problems were concerned. That as a result thereof, the records, checks and otherwise which you have all seen were kept and maintained in Mr. Keane's office, and Mr. Allen did not see or have access to them until a long time after this indictment, and that at no time had he made or was afforded any examination of the records until long after the indictment was returned, and some short time before this trial began. We will show further that as far as all the books and records are concerned, Mr. Allen had no access to them; that in fact Mr. Keane and at different times through Mrs. Vermillion and himself had refused to allow him any access to these records, and that the office help had been instructed that Mr. Allen wasn't to have access to these records.

We will show that pursuant to the arrangement on investment they did proceed so far as development on the Neihart property was concerned, and we shall show that Mr. Allen contributed tremendous sums of money out of his own [1001] personal funds during 1945, 1946, and in other years for the development of the property at Neihart. We shall show that those funds exceeded \$100,000, drawn from his own funds and invested in that property. We will likewise show that so far as Mr. Allen was concerned, that during the great rise in prices in the peak of stocks, that Mr. Allen did not profit in any sense whatsoever; that so far as his acquired property or stocks in the Lucky Friday Extension, such

was not done as to the bulk of those stocks until the year 1946, and long after the rising market had deteriorated and the metals were on the down grade.

We will show that Mr. Allen's stock was sold so far as Extension was concerned well over a year after the original issue, and well after the time when the market price had reached 32½ cents, and that the average return to Mr. Allen of Lucky Friday Extension was somewhere in the neighborhood of 8 cents a share. We shall likewise show that as to the Pilot, any stock acquired by Mr. Allen was not sold during the peak market, and as a matter of fact, was not sold as to any share owned by Mr. Allen until well after, twelve, fourteen, sixteen months after the market had been made by the issue of Pilot stock, and that rather than selling at a rising market, that Mr. Allen's highest price, well over a year after Pilot had been incorporated, was the sum of 3½ cents a share, and as [1002] low as two cents a share as to any stock he had acquired in Pilot, and likewise with respect to the various prices I have mentioned on Extension.

We shall show furthermore that the defendant Allen did not then nor has he since profited from any sales of stock acquired by him in either of those companies, and we shall show that he has not as of the present time profited in any manner from the investment in the Neihart property, and we will show that Mr. Allen, although at the time of his first ventures and shortly after the first time was a man who was worth generally speaking some-

where in the neighborhood of seventy five or one hundred thousand dollars, he is as of this date without funds, and is in debt with regard to the transactions which have occurred in the past seven or nine years to an extent exceeding fifty thousand dollars, and that any funds, practically all the funds Mr. Allen secured were invested in these properties.

We will further show that Mr. Grismer came to him and told him in the year 1946 that so far as the development of these properties was concerned, that the bills were not being paid. Mr. Allen will further show that so far as the Lexington was concerned, the bills were not being paid, although he during 1946 had contributed to the Lexington a sum total in cash exceeding seventy thousand [1003] dollars, and we will show that these funds were deposited in the account that existed in the Wallace bank, and that he had no access to the account, and had a perfect right to assume from his contributions which in some instances were in amounts of ten thousand, fifteen thousand, five thousand dollars, that funds were on hand at that time. We will show too, from records that Mr. Allen made and kept in the course of his business in the operation of the Neihart property, that there is no reasonable excuse for any funds other than the funds which he was contributing and the funds committed from Independence Lead to keep in operation without loss the Neihart property, and we will show that there was no situation that existed whatsoever in

the Lexington property at the time of the development of the Pilot or the Lucky Friday Extension that necessitated any funds whatsoever from either of those companies for the purpose of "bailing out" of anything.

That shall be the proof that we shall expect to show you, ladies and gentlemen. We will show you there was no profit so far as Allen was concerned; that he wasn't a promoter; that he had no relationship whatsoever to these events which have been testified to here, and that to the contrary he hasn't, as I say, profited any. We will show I think to your satisfaction that his experience and work in the mining business has been concerned throughout [1004] the time of this indictment with a central development program; that he worked and has devoted practically all the time he's been in the mining business to that; that he did not work particularly or at all for any group or interested party, and that he never was a partner of Mr. Keane or a partner of anybody, and that pursuant to his program of joining with these different groups and people in the joint operation and attempting to co-ordinate all of the activities of these companies in the central development program in the area in which these mines are located, that he's continued and worked on that program to an ultimate objective, and that up until the present date and as of now he is so engaged in that program; and I think we'll be able to show you that at the request of Mr. Grismer Mr. Allen employed Mr. James A. Wayne,

of Wallace, Idaho, and that they then attempted to get an accounting from Keane; that there was constant refusal by Mr. Keane to divulge anything, and as a matter of fact, I think we shall be able to show that an attorney was sent up there to see if he could get Mr. Keane to make some revelation of what the accounts were for the purpose of making annual statements, and Mr. Keane refused to do so, and finally Mr. Allen, Grismer and Wayne were able to secure a stockholders' list and called upon and Keane and threatened that they would call a stockholders' meeting [1005] and throw him out of the company unless he made some divulgence of what had been going on. That pursuant to that there was a meeting in Mr. Keane's office and Keane, Vermillion and Evans submitted their resignations. Mr. Keane asked for sixty days to get his accounts in shape, and that he did not get them in shape, and that the books were turned over to the Securities and Exchange Commission and Mr. Allen has not seen them since until shortly prior to this trial.

We will show that Mr. Allen did not go to Mr. Keane's house on December 26 at 3 o'clock in the morning, but that he went down a long time prior to that, at about 9 o'clock in the evening, and he saw Keane then after following him for a long time, and that he asked to get a divulgence of what was going on. We will further show that at these meetings and at the time the demand was made upon Mr. Keane, and at the meetings where Mrs. Ver-

million and Mr. Evans were present, Mr. Keane never claimed that he had a partnership with Mr. Allen; he never claimed at the time of his meeting at his home, never claimed there was a partnership arrangement; Mrs. Vermillion never claimed there was a partnership arrangement, none of them made any claim upon the defendant Allen at any time that he was ever a partner in the ventures which have been testified to here by Mr. Keane. Thank you. [1006]

* * *

ARTHUR LAKES

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Etter:

Q. Will you state your name?

A. Arthur Lakes.

Q. Where do you reside, Mr. Lakes?

A. Spokane.

Q. How long have you been a resident of Spokane? A. Since 1943.

Q. And prior to that time you resided where?

A. I was up in British Columbia.

Q. And will you state, Mr. Lakes, your occupation, please?

A. Mining engineer and consultant.

Q. You're a mining engineer?

A. Yes, sir.

(Testimony of Arthur Lakes.)

Q. And a graduate of what University?

A. Well, I didn't graduate; I'm from the Colorado School of Mines. [1007]

Q. I see, but you're qualified and licensed as a mining engineer? A. Yes, sir.

Q. And how long have you followed that profession? A. About 35, 36 years.

Q. And Mr. Lakes, do you follow that profession only in the United States and in this area?

A. No; internationally.

Q. Where have you examined mines and done geological work?

A. Oh, in practically all the Northwest states and British Columbia; Colorado River.

Q. And at this time, Mr. Lakes, do you maintain an office in British Columbia? A. Yes, sir.

Q. . And here in Spokane? A. Yes, sir.

Q. And have you made examinations, Mr. Lakes, of various properties in the Coeur d'Alene area, having specific reference to properties described as the Big Friday, and the Vindicator, and the Hibernia, and the Gold Hunter, and various mines there?

A. Yes, sir.

Q. And you're well acquainted with that area?

A. Yes, sir.

Q. Are you also likewise acquainted, Mr. Lakes, with the [1008] metals mining area known as the Neihart area? A. Yes, sir.

Q. Which is situated where?

A. Well, it's in Montana near the town of Nei-

(Testimony of Arthur Lakes.)

hart, which is south, I think, and a little east of Great Falls. How many miles I don't know.

Q. And are you acquainted with the property over there, Mr. Lakes, known as the Lexington Silver Mines property? A. Yes, sir.

Q. And will you tell the jury of what that property consists? [1009]

* * *

A. Well, in a preliminary way it consists of the Big Seven Mining Group, with a mill and camp, and the Flora Vein and other operations that have been opened by considerable amount of work and have been with respect to the Big Seven highly productive in silver and lead.

Q. Do you know of your own knowledge that it has been a highly productive mine in silver and lead?

A. From records only, government records.

Q. And they so indicate?

A. Yes, state records.

Q. And there are considerable workings, underground workings, tunnels and likewise?

A. Yes, sir.

Q. And you say there is a mill there?

A. There is a mill, yes.

Q. And is there a complete mining operation there, Mr. Lakes? A. Yes.

Q. Now, Mr. Lakes, did you have reason or cause to make an investigation of the property located in Neihart known as the Lexington Silver Lead?

A. Yes, sir.

(Testimony of Arthur Lakes.)

Q. Now, before I go any further with that, Mr. Lakes, are you acquainted with the defendant Mr. James A. Allen, seated at my right?

A. Yes, sir. [1010]

Q. And how long have you known Mr. Allen?

A. Well, I think about around 1944.

Q. Around about that time? A. Yes.

Q. And are you acquainted with Mr. F. Clayton Keane? A. Yes, sir.

Q. And when did you first meet Mr. Keane?

A. In the late fall of 1943.

Q. In the late fall of 1943? A. Yes, sir.

Q. Do you recall what date that would be in 1943?

A. No, I couldn't. There was some snow. I came over into Wallace, and there was some snow on the ground, so it was late fall.

Q. It wasn't the summer, was it?

A. No, it wasn't the summer.

Q. Now, you say that you did make an inspection of the Neihart property? A. Yes, sir.

Q. And when was that inspection made, Mr. Lakes? A. In July, 1944.

Q. In July of 1944? A. Yes, sir.

Q. Had you been to the property in Neihart prior to July of 1944? [1011]

A. I had never been in Neihart prior to July, 1944.

Q. Well, Mr. Lakes, there is an exhibit admitted in evidence, and I'd like to read just a part of it

(Testimony of Arthur Lakes.)

here to you. It's dated June 29, 1943, office of Independence Lead Mines Company, Wallace, Idaho——

Mr. Erickson: What exhibit is that?

Q. That's Exhibit J, Defendant's Exhibit J, Mr. Erickson, and it is stated in this exhibit as follows, Mr. Lakes: "The president stated that the Montana Leasing Company had employed Mr. Arthur Lakes to make an examination of the property under lease from Benton Mining Co. and the Snowstorm Group of claims, located in Cascade County, Montana, that said examination had been made and that Mr. Lakes had recommended the prospects incident to said work being carried on by the Montana Leasing Company in the highest terms and had stated that, in his opinion, the continuation of the work would result in the securing of a substantial ore body." That is dated, Mr. Lakes, June 29, 1943. Had you made any examination of the property described before June 29, 1943?

A. I made the examination, and the first examination, in July of 1944.

Q. In July of 1944? A. Yes, sir.

Q. And on June 29 of 1943 or immediately around that time [1012] were you acquainted at all with Mr. F. C. Keane? A. No.

Q. You were not acquainted with him?

A. No, sir.

Q. Did you, Mr. Lakes, make a written report of your investigation to Mr. Keane on that property at Neihart?

(Testimony of Arthur Lakes.)

A. I made a report dated August 6, 1944.

Q. August 6, 1944? A. Yes.

Q. And what was the nature of that report?

A. It was favorable.

Q. It was favorable?

A. Yes, sir. August 7, pardon me.

Q. August 7 of 1944? A. Yes.

Q. And you submitted that, did you, to Mr. Keane? A. Yes, sir.

Q. And did you have any more business or any more investigation of that property after you had made the report, Mr. Lakes?

A. Yes, I made periodic trips up there for some time after that.

Q. For some time after that?

A. Yes; I can't specify.

Mr. Etter: I think that's all, Mr. Lakes. [1013]

Cross-Examination

By Mr. Erickson:

Q. Mr. Lakes, did Mr. Allen employ you to make those examinations of the Neihart property?

A. Mr. Keane employed me to make the examination of the Neihart property.

Q. Who paid you for making it?

A. Mr. Keane paid me.

Q. Did Mr. Allen pay you anything for making those examinations?

A. Not that I recollect.

Q. Are you a mining engineer, Mr. Lakes?

A. Yes, sir.

(Testimony of Arthur Lakes.)

Q. Do you hold a degree from a university for mining engineering? A. No, sir.

Q. You're just a practical mining engineer?

A. Well, I had a little better than that. My father was professor of geology at the Colorado School of Mines. I went to the School of Mines. I went in and learned geology under my father. I learned assay and chemistry from one of the best chemists in the United States, and I worked under other engineers, as some of the most prominent engineers have done.

Q. Are you a geologist?

A. Yes, sir. [1014]

Q. As a matter of fact you are a geologist more than you are a mining engineer, are you not?

A. Well, yes; that's rather a difficult differentiation, though.

Q. Do you hold a degree in geology?

A. I have no degrees, no, sir.

Q. And you have made considerable examinations on properties in the vicinity, in the Neihart vicinity there, on this Lexington——

A. The only property I've examined in Neihart was the property we're speaking about.

Q. Is the Neihart district a known mining district with several mines, or is there only just the one?

A. No, it's a known mining district that dates 'way back, and there's several mines there.

(Testimony of Arthur Lakes.)

(Whereupon, a check from Plaintiff's Exhibit for identification 8-m was marked Plaintiff's Exhibit No. 8-m-1 for identification.)

Q. I'll hand you Plaintiff's identification 8-m-1, and ask you to state if that is not a check payable to yourself signed by the defendant James A. Allen?

A. Yes, sir.

Q. Isn't that a check to you for work on the Neihart property?

A. Not that I know of, sir. It says "charge to the Pilot Lead". I worked a little at the Pilot, too. [1015]

Q. Did you do some geology work at the Pilot?

A. I did some geology work on the Pilot, yes, sir.

Q. And that's for \$400.00? A. Yes, sir.

Mr. Erickson: I offer 8-m-1 in evidence.

Mr. Etter: I'll object to the admission of this exhibit at this time, your Honor, on the ground that it's incompetent, irrelevant and immaterial to prove anything so far as this witness is concerned of any association with the defendant Allen as brought out on direct examination; it's incompetent, irrelevant and immaterial.

The Court: Let me see it.

Mr. Etter: I didn't ask him any questions about that.

The Court: Objection overruled.

Mr. Etter: Exception. I want to add further, it's

(Testimony of Arthur Lakes.)

improper cross-examination as not being gone into on direct at all.

(Whereupon, Plaintiff's Exhibit No. 8-m-1 for identification was admitted in evidence.)

(Whereupon, a check from Plaintiff's Exhibit for identification 8-i was marked Plaintiff's Exhibit No. 8-i-2 for identification.)

Q. (By Mr. Erickson): Mr. Lakes, I will hand you Plaintiff's identification 8-i-2, and ask you if that is not a check [1016] payable to yourself signed by the Montana Leasing Company?

A. Yes, sir.

Q. Is that check for \$500.00 dated February 22, 1946?

A. Yes, sir.

Q. And what is that check for?

A. I have no recollection, but it looks like it would be payment for an examination.

Q. And that's signed by the defendant J. A. Allen, is it not?

A. Yes.

Mr. Erickson: I offer Plaintiff's 8-i-2.

Mr. Etter: No objection.

The Court: Exhibit 8-i-2 admitted.

(Whereupon, Plaintiff's Exhibit No. 8-i-2 for identification was admitted in evidence.)

(Whereupon, a check from Plaintiff's Exhibit for identification 8-g was marked Plaintiff's Exhibit 8-g-1 for identification.)

(Testimony of Arthur Lakes.)

Q. (By Mr. Erickson): Mr. Lakes, I'll hand you Plaintiff's identification 8-g-1, and ask you to state if that is not a check payable to yourself by the Montana Leasing Company and signed by the defendant J. A. Allen? A. Yes, sir.

Q. And that is dated December 21, 1945, and is for a thousand dollars, is it not?

A. That's right, sir. [1017]

Q. What does that check represent?

A. I think that that was the purchase of some Lucky Friday Extension stock that I had.

Q. That check is signed by the Montana Leasing?

A. Yes, sir.

Mr. Erickson: I offer it.

Mr. Etter: I object to that as wholly outside the scope of the direct examination, and not material or competent in any sense to prove any issue made in this case; a private sale of stock.

The Court: Well, it goes to the relationship of the witness and the defendant. He's testified he didn't recall any check from the defendant.

Mr. Etter: I recall he testified that the defendant Keane hired him and paid him. He hasn't testified he never did any work for Mr. Allen.

The Court: This is my note, that he doesn't recollect that Mr. Allen paid him anything. Objection overruled. Exhibit 8-g-1 admitted.

(Whereupon, Plaintiff's Exhibit No. 8-g-1 for identification was admitted in evidence.)

(Testimony of Arthur Lakes.)

(Whereupon, a check from Plaintiff's Exhibit for identification 8-a was marked Plaintiff's Exhibit No. 8-a-1 for identification.)

Q. (By Mr. Erickson): I'll hand you Plaintiff's identification [1018] 8-a-1, and ask you if that is not a check dated June 18, 1948, to yourself from the Montana Leasing Company and signed J. A. Allen?

A. June 18, 1945, signed by the Montana Leasing Company to me, not 1948.

Q. That is for \$300.00? A. Yes.

Mr. Erickson: I offer Plaintiff's identification 8-a-1.

Mr. Etter: I object to it on the same grounds; I don't know that it proves anything in this case.

The Court: Objection overruled; 8-a-1 admitted.

(Whereupon, Plaintiff's Exhibit No. 8-a-1 for identification was admitted in evidence.)

The Court: Now, counsel, if you have a number of those checks I think you should collect them together.

Mr. Erickson: This is the last one, your Honor. Wait—there are some more here; I will offer these in a group; these are not marked with any of the identifications.

(Whereupon, a check from Plaintiff's Exhibit for identification 8-c was marked Plaintiff's Exhibit No. 8-c-3 for identification.)

(Testimony of Arthur Lakes.)

Q. (By Mr. Erickson): I'll hand you Plaintiff's identification 8-c-3, and ask you to state if that is not a check, an unsigned check by the Montana Leasing Company payable to [1019] yourself in the sum of \$189.07 dated August 16, 1945?

A. It's not signed.

Q. Do you recall anything about that?

A. That check was \$189.00, and that was for some work for the Lucky Friday Extension, and I think for Montana Leasing Company, inclusive of expense, making the odd amount.

Q. There's a notation "O.K.'d per phone." Does that recall anything to your mind?

A. No, it doesn't, Mr. Erickson.

Q. Do you know who made that check or authorized it?

A. Well, that's Mr. Allen's handwriting, I think.

Mr. Erickson: I offer 8-c-3.

Mr. Etter: I'll object on the same grounds previously mentioned; it's outside the examination, and improper cross.

The Court: Let me see it. Well, that objection is sustained. It's an unsigned check.

Mr. Erickson: The testimony of the witness was it's in Mr. Allen's handwriting.

A. (The Witness): I think.

The Court: Well, I appreciate that he now thinks it looks like Mr. Allen's; there's nothing to show at the time he received it that he knew it was Mr. Allen's, or that he connected it at the time. The

(Testimony of Arthur Lakes.)

check is entirely without moment in this case, and is rejected. [1020]

(Whereupon, the Plaintiff's Exhibit No. 8-c-3 for identification was rejected.)

(Whereupon, three checks were marked Plaintiff's Exhibit No. 122 for identification.)

Q. (By Mr. Erickson): I'll hand you Plaintiff's identification 122, consisting of three checks, one a photostatic copy of a check dated March 1, 1946, in the sum of \$190.61 to yourself, signed by the Montana Leasing Company by J. A. Allen; do you recall that check?

A. Well, I don't recall it, but it's to me, and there's a notification of what it's for, Pilot Silver Lead, Montana Leasing.

Q. I refer you to the second check in the exhibit, a check dated September 5, 1946, to yourself for \$100.00 signed by the Lexington Silver Lead Mining Company, J. A. Allen; do you recall what that number 2 check in the exhibit is for?

A. There's a notation at the corner "Lucky Friday X Mining Company, August, 1946;" probably for expenses.

Q. The third check is a check dated September 5, 1946, to yourself in the sum of \$100.00 signed by the Lexington Silver Lead Mining Company, by J. A. Allen. Do you recall the circumstances connected with that check?

A. In the corner it says, "Pilot Silver Lead

(Testimony of Arthur Lakes.)

Mining Company, August, 1946." Those were retainers. [1021]

Q. So that you were paid for doing work on the Lucky Friday and the Pilot Silver Lead Mining Company by Lexington Silver Lead Mining Company's checks, then? A. Yes, sir.

Mr. Erickson: I offer 122.

Mr. Etter: We'll object on the same ground, it's improper cross-examination.

The Court: Let me see the checks. Overruled.

Mr. Etter: Exception.

The Court: Exhibit 122 admitted.

(Whereupon, Plaintiff's Exhibit No. 122 for identification was admitted in evidence.)

Q. (By Mr. Erickson): You have a son, Arthur Lakes, Jr.? A. Yes, sir.

Q. Was he employed by Mr. Allen?

A. For a short time, yes.

Mr. Etter: Just a minute; I'm going to object to that as going outside the scope of the direct examination; what's Mr. Lakes' son got to do with anything on direct?

The Court: The only purpose of the question is to show an inclination of the witness towards Mr. Allen, but unless there's something more substantial than has been suggested, I'll sustain the objection.

Mr. Erickson: The purpose was to show the interest.

The Court: Well, I assume that, but unless the

(Testimony of Arthur Lakes.)

interest [1022] is going to be established by more than a temporary employment of his son by Mr. Allen or some company connected with him, it's not of interest here.

Q. (By Mr. Erickson): Is your office in Spokane in connection with Mr. Allen's office?

A. My office is in the Davenport Hotel, and has been since I come to Spokane——

Q. You have——

A. At one time—let me follow this out, please—at one time I did put my map files in there, lacking room, and possibly have gone into that office once a month or once every two or three months when I wanted a map, my own map file.

Q. You have maps and articles still there?

A. Yes, sir.

Mr. Erickson: That's all.

Redirect Examination

By Mr. Etter:

Q. Mr. Lakes, when you made these examinations for which you received these checks, were those examinations made of just one property, or of numerous properties?

A. They weren't for any one property. I made a great many examinations. If you want me to specify, I can give you the names as far as I remember.

Q. All right.

A. Sometime about 1945 or 1946 I made an examination of the Gold Hunter Mine at the in-

(Testimony of Arthur Lakes.)

stigation of Mr. Allen, and I [1023] looked at properties over in Superior, the name I can't remember, a number of properties also in the Coeur d'Alenes, the Coeur d'Alene Consolidated and places like that.

Q. Was it a practice of yours, Mr. Lakes, when you made one of these examinations, to make the examination of several mines and have the various companies split the expense of the examination?

A. If I could, yes.

Q. And that's evidenced in numerous of these checks? A. Well, I presume so.

Q. No independent recollection——

A. No, sir.

Q. ——but you presume so? A. Yes, sir.

Q. Now Mr. Allen of course has hired you on numerous occasions after you made the examination of Montana Leasing, is that correct?

A. Yes, sir.

Mr. Erickson: I think the questions are objectionable as plainly leading.

The Court: Just a moment; let the question be read, and I'll let you pass on it.

(Whereupon, the reporter read the last previous question.)

The Court: I'll let you decide whether it's leading [1024] or not.

Mr. Etter: I don't think so, under the theory that I have, your Honor.

(Testimony of Arthur Lakes.)

The Court: All right, you may answer it.

A. I did answer it.

Mr. Etter: What was the answer?

(Whereupon, the reporter read the answer to the last previous question, as follows: "Yes, sir.")

Q. But you were not employed on the original examination of the Neihart property by Mr. Allen?

A. I was employed by Mr. Keane on the original examination of the Neihart property.

Q. And you were paid by Mr. Keane?

A. I was paid by Mr. Keane.

Q. And is it your testimony that Mr. Allen never paid you or hired you?

A. That had nothing to do with the first testimony, because Mr. Allen did, and it's a known fact that he paid me at various times also for work on the Montana Leasing.

Mr. Etter: That's all.

Recross-Examination

By Mr. Erickson:

Q. Well, Mr. Lakes, Mr. Allen did pay you for some examinations on the Pilot and the Lucky Friday Extension?

A. As I testified, some months ago my recollection as to who paid me for the Pilot or the Lucky Friday Extension again [1025] means a statement that he did or he didn't; I'm under oath, and I've got to——

(Testimony of Arthur Lakes.)

Q. How about those \$100.00 checks?

A. Those \$100.00 checks were retainers, monthly retainers that I went up and made inspections of these properties by the month.

Q. On the Pilot Silver and Lucky Friday Extension?

A. Pilot and Lucky Friday Extension, and I mapped the Lucky Friday Extension every month while they were operating.

Q. And you did that at the request of the defendant Allen?

A. I did it pursuant to my occupation or my employment by the Lucky Friday Extension.

Mr. Erickson: That's all.

Redirect Examination

By Mr. Etter:

Q. And isn't it a fact that you made investigation of all of those properties pursuant to Mr. Allen's interest in the Gold Hunter, which was the central property up there?

Mr. Erickson: To which we object as leading.

Mr. Etter: You opened it up.

The Court: Just a moment; let me hear the question.

(Whereupon, the reporter read the last previous question.)

The Court: The objection is made that it's leading. I do not see how I can hold otherwise. Sustained.

(Testimony of Arthur Lakes.)

Q. (By Mr. Etter): Were you employed by Mr. Allen during the time [1026] of his interest in the Gold Hunter?

A. I was employed by Mr. Allen to make an examination of the Gold Hunter Mine, yes.

Q. And you had discussed with Mr. Allen—had Mr. Allen discussed with you the matter of the central development program in that area?

A. That was the objective of the examination of the Gold Hunter.

Q. And pursuant to the examinations in that area, did you make examinations of surrounding property at Mr. Allen's request?

A. Well, I had made examinations of most of these properties prior to the examination of the Gold Hunter. The acquisition of the Gold Hunter was one of the sequences of the plan of opening up the mines.

Q. And there were numerous people that had different plans for that, did they not?

A. I understand there were, yes.

Q. These reports you made on the surrounding properties were given to Mr. Allen, were they not?

Mr. Erickson: To which we object again as leading and suggestive.

The Court: Sustained.

Q. (By Mr. Etter): Did you make reports and return them to Mr. Allen on surrounding properties? [1027]

A. I made no report on the Gold Hunter, be-

(Testimony of Arthur Lakes.)

cause the operation didn't go far enough to make a report on it. I just made the examination and typed it.

Q. Did you make reports to Mr. Allen on the surrounding property?

A. Yes, sir, I made reports on the Hunter Silver Lead and various other operations up there.

Q. And Mr. Allen paid you for it?

A. Yes.

Q. And other people paid you for it?

A. Other people paid me, yes, for work I engaged in.

Mr. Etter: That's all, Mr. Lakes.

The Court: The jury will have its usual ten minute recess. I understand there is no further examination of Mr. Lakes, is that right?

Mr. Erickson: Well, I'd better wait, during the recess——

The Court: All right, you wait until after the recess.

(Short recess.)

(All parties present as before, and the trial was resumed.)

Recross-Examination

By Mr. Erickson:

Q. Mr. Lakes, did you receive some stock in the Lucky Friday Extension Mining Company from Mr. Allen in 1946, December [1028] and April, 1946, and March, 1947?

(Testimony of Arthur Lakes.)

Mr. Etter: I'm going to object to that question as being improper cross-examination, not gone into on direct, incompetent, irrelevant and immaterial.

The Court: Insofar as now appears, it's improper. Objection sustained.

Mr. Erickson: I would say it would go to the interest of the witness, receiving stock from the defendant.

The Court: You didn't ask that question.

Mr. Erickson: I asked him if he received his stock from the defendant in the Lucky Friday Extension Mining Company.

The Court: If that was the question I'm mistaken. Let me hear it, Mr. Taylor.

(Whereupon, the reporter read the last previous question.)

The Court: The ruling is reversed. I didn't notice that you said from Mr. Allen.

Mr. Etter: Exception.

The Court: Noted.

A. I have no recollection of receiving any Lucky Friday stock from Mr. Allen. I received 25,000 shares as part payment for an examination fee of the Lucky Friday Extension.

Q. And who paid you that?

A. Well, the company. [1029]

Q. Did Mr. Allen have anything—

A. I never received any certificates. The certificates were sold and put into my account.

Q. Who arranged the accounts for you?

(Testimony of Arthur Lakes.)

Mr. Etter: I'm going to object to that again as improper. He's already answered the question; I don't know why the matter has to be pursued. He says he didn't get any from Mr. Allen.

The Court: I'll sustain the objection; it's remote.

Mr. Erickson: That's all.

Mr. Etter: That's all, Mr. Lakes.

(Whereupon, there being no further questions, the witness was excused.)

J. T. HALIN

recalled as a witness on behalf of the defendant,, resumed the stand and testified as follows:

Direct Examination

By Mr. Etter:

Q. Your name is J. T. Halin? A. Yes, sir.

Q. And you're the same J. T. Halin who testified here the other day? A. Yes, sir.

Q. Now, Mr. Halin, you stated that you're acquainted with Mr. Allen? A. Yes, sir.

Q. And I want to ask you, are you acquainted with John Sekulic? [1030] A. Yes, sir.

Q. Directing your attention to sometime in the early part of 1945, I will ask you whether or not you were in attendance at a cafe, I believe, in Wallace, I don't know, where the matter of the Lucky Friday Extension was being discussed?

A. Well, can I explain it to my own way?

Q. Yes. First, were you at the meeting?

(Testimony of J. T. Halin.)

A. Yes.

Q. Yes. Now, will you state——

A. Not at the meeting.

Q. Beg your pardon? You weren't at a meeting?

A. Not exactly any kind of a meeting; that was the Metals Bar.

Q. I see, you were at the Metals Bar?

A. Yes.

Q. And was the matter of the Lucky Friday Extension being discussed there? A. It was.

Q. And who was there at that time, Mr. Halin?

A. Well, my recollection there was quite a number of fellows there.

Q. Was John Sekulic there?

A. John Sekulic.

Q. Mr. Horning? A. Yes.

Q. Mr. Keane? [1031] A. Yes.

Q. And yourself? A. Yes.

Q. Mr. Allen? A. Yes.

Q. Anybody else that you can recall?

A. I think McDonald was there.

Q. Bob McDonald?

A. Bob McDonald, yes, he was there.

Q. And were there several others?

A. Several others, yes.

Q. Who brought that matter up, that is, the organization of the Lucky Friday Extension?

A. Well, that was happen in Mullan.

Q. It happened first in Mullan?

A. Yes, sir.

(Testimony of J. T. Halin.)

Q. And who were you talking with in Mullan?

A. Well, I went over there and seen John Sekulic, and I was looking for some second hand pipe, and the matter came up, he and Keane, and John Sekulic mentioned, we were outside, right in front of his service station, he says, "You see this hillside here? Why not organize another mining company?" and that was all, didn't say anything about it, and I left on my way, and in the late afternoon I stopped at the Metals Bar, I was on my way to the hotel, and those [1032] bunch of fellows was going to organize a mining company, call it the Lucky Friday Extension.

Q. Who said that down there?

A. John Sekulic, and then a group of fellows going to put in \$500.00 apiece for start the company rolling, and I was invited also in the deal, but I refused. I tell them I didn't—I couldn't see my way to the deal, and I didn't put any money in it.

Q. Did John Sekulic say he'd put \$500.00 in?

A. I didn't see any money transaction, but they all agree.

Q. Was Mr. Allen there?

A. Mr. Allen was there.

Q. Did he say anything about putting any money in it?

A. I don't remember correctly, but I suppose he did, because the whole bunch, there was a quite a few, and they was all agree to put in \$500.00 apiece and start a company organized.

(Testimony of J. T. Halin.)

Q. But Mr. Sekulic proposed it?

A. He's the first one that mentioned the Lucky Friday Extension to me, in my knowledge.

Q. I see. Now, you likewise know Mr. Keane, who testified here, Clayton Keane? A. Yes.

Q. You know him?

A. Yes, acquainted with him in 1944. [1033]

Q. In 1944, and were you fairly well acquainted with Mr. Keane?

A. No, except I had some business with Mr. Keane in 1944.

Q. What was that business?

A. I loaned him some money on the Clayton Silver Mining stock.

Q. You loaned him some money?

A. Yes, sir.

Q. That was in 1944? A. Yes, sir.

Q. And you also had some business transactions with him in 1945, was it not, after the organization of the Lucky Friday Extension?

A. Well, that was later, when the Lucky Friday Extension was organized, that was maybe September or October, about September, I believe, I was in Mr. Keane's private office, and the thing come up, wanted to know if I was interested in buying any stock, then it takes a little time, then it was about October either 14th or 15th when I complete the deal.

Q. You completed the deal, you completed the deal with Mr. Keane? A. Yes, sir.

(Testimony of J. T. Halin.)

Q. And all the negotiations having to do with buying the stock were made with Mr. Keane?

A. Except when the stock was—when I take the stock and I [1034] paid the money for it, Mr. Allen, at the Davenport Hotel.

Q. Mr. Allen gave you the stock, didn't he?

A. And I gave him a check for \$13,000 and \$7,000 in cash, for the purchase of the stock.

Q. You gave it to Mr. Allen, isn't that so?

A. I gave it to Mr. Allen.

Q. But you never made the purchase from Mr. Allen?

A. Not for that block of stock. Later on I bought some through Mr. Allen.

Q. Later on. Now, that later on when you got it from Mr. Allen, that was in exchange for some Silver Syndicate that you had?

A. Yes, sir.

Q. You exchanged some stock?

A. Yes, sir.

Q. Directing your attention to possibly a week or ten days ago, did you at that time have a conversation with Mr. Denney, seated here, about the transaction having to do with the purchase of stock from Mr. Keane?

A. Yes.

Q. And did Mr. Denney call at your house or did he call you on the phone?

A. Well, Mr. Denney talked me numbers of times in my own office, but then since this trial started I report here for a witness, and I meet Mr. Denney in office here on [1035] this floor.

Q. Did you have a talk with him a week ago or

(Testimony of J. T. Halin.)

so about this purchase that you made from Keane?

A. Since the trial started, you mean?

Q. Just before the trial started, a week or so before the trial started?

A. Well, Mr. Denney talked to me about that down at my office.

Q. And what did he talk to you about this purchase that you made from Keane?

A. Well, Mr. Denney, he took all my confirmations which I give to him a long time ago, and he still has them, all the confirmations, purchase of that stock.

Q. Well, did he say anything to you about your testimony with regard to the purchase of stock from Mr. Keane?

A. Well, there was something mentioned since the trial started, I believe it was last Thursday morning.

Q. All right, what happened then?

A. Well, Mr. Denney asked me to meet Mr. Keane and talk over the things before I'm called to the witness stand.

Q. Did he say what reason he had for that?

A. Well, reason so maybe make it better for the jury if we have an understanding, but I told Mr. Denney I don't want to see anyone and I don't want to talk to anybody until I get on the witness stand, because I have only one thing to tell. [1036]

Q. What did Mr. Denney say to that?

A. Well, Mr. Denney say, "I think you and Keane should get together, because if you get on

(Testimony of J. T. Halin.)

the witness stand they may make a fool out of you.”

Q. Who may make a fool out of you?

A. I don't know.

Q. All right. Did you see Keane that morning?

A. No.

Q. While this trial was in progress?

A. Not that morning, no.

Q. When did you see him?

A. I believe Monday morning.

Q. Were you invited in again by Mr. Denney?

A. Yes.

Q. All right, and who was there then?

A. Denney and I was there alone, and a few minutes later Denney asked me to sit down, and he say he had something he wanted to go over with me, and a few minutes later Mr. Keane and Mr. Stocking and Mr. Erickson walked in.

Q. And what was said?

A. Well, they asked me about the questions about this purchase of this stock.

Q. The same thing that Mr. Denney had talked with you about earlier in the trial? What did they say to you, Mr. Halin?

A. Well, they was—I guess Denney asked me who I purchased [1037] that stock, and I tell him I purchase from Mr. Keane, and I think a few hot words went through, and I guess Clayton Keane called me a liar.

Q. What did you call him?

A. And I told him I didn't like to be called that,

(Testimony of J. T. Halin.)

because I don't have to lie for anybody, and I told him I can go anyplace in the world and look everybody square in the face, and I don't like that kind of language.

Q. You told this to Keane? A. Yes, sir.

Q. And that was the end of the conversation?

A. Yes, that was the end of the conversation.

Mr. Etter: That's all.

Cross-Examination

By Mr. Erickson:

Q. Now, Mr. Halin, you talked to Mr. Denney about this case quite a few times?

A. Quite a few times.

Q. You know Mr. Denney is a securities investigator with the Securities and Exchange Commission?

A. Oh, yes, and that's the reason I gave Mr. Denney all my records.

Q. By the way, Mr. Allen owes you about \$15,000 right now, doesn't he?

Mr. Etter: I'm going to object to that as improper cross-examination. [1038]

The Court: Overruled.

Q. Does he owe you about \$15,000 now?

A. Yes, but that is——

Q. Well, you've answered the question. Now, Mr. Denney at no time ever told you to tell anything but the truth? A. No.

Q. He told you to stick to the truth at all times when he's talked to you? A. Yes.

(Testimony of J. T. Halin.)

Q. And your memory has been kind of hazy about most of these details, hasn't it? A. No.

Q. Have you remembered every detail in connection with all your stock transfers?

A. No.

Q. Well, then, your memory has missed certain details of what's taken place in all your multitude of stock transactions?

A. Yes, like the stock certificate numbers and so forth I never tried to keep track.

Q. And Mr. Denney was merely trying to refresh your memory so you could get straightened out in your own mind as to what did take place?

A. Maybe so.

Q. And he at no time in the office gave you a story to tell the [1039] jury or anything of that nature, did he?

A. No, only Denney asked me——

Q. Didn't he make some schedules, trace some certificates for the purpose of aiding you in refreshing your memory and recollection?

A. On the number of the certificates, yes, which you have the letter on it, I think.

Q. And didn't you first tell Mr. Stocking and Mr. Denney in your office in Spokane here that the first dealings were with Allen on the Lucky Friday X and the Pilot stocks? A. I don't think so.

Q. You don't recall telling them that, if you did? Didn't you tell them that first, and then say that you had recalled differently when you re-

(Testimony of J. T. Halin.)

freshed your recollection on the facts? Didn't you make that statement first and then think the matter over and change your statement later? A. No.

Mr. Erickson: That's all.

Mr. Etter: That's all, Mr. Halin.

(Whereupon, there being no further questions the witness was excused.)

W. J. EMACIO,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Etter:

Q. Will you state your name, please? [1040]

A. W. J. Emacio.

Q. And where do you live, Mr. Emacio?

A. Wallace, Idaho.

Q. How long have you lived up there, Mr. Emacio? A. 45 years.

Q. 45 years; and at the present time what is your occupation, sir?

A. I'm manager of the White and Bender Finance Company.

Q. And likewise are you associated with any mining companies?

A. Yes, sir, secretary and treasurer of the Lucky Friday Silver Lead Mines Company, Wallace.

Q. And have you certain records with you, Mr.

(Testimony of W. J. Emacio.)

Emacio, in response to a subpoena duces tecum?

A. Yes.

Q. And as secretary-terasurer of the Lucky Friday Silver Lead Mines do you have custody of those records?

A. Yes.

Q. And is it your job as secretary-treasurer to keep an accurate account of the information shown in those records?

A. Yes.

Q. They have been in your custody since you've been an officer?

A. Yes.

Q. And are the official records of the company?

A. Yes.

Q. I'll ask you, Mr. Emacio, if since you were subpoenaed you [1041] have taken occasion to refresh your recollection on the financial position of the Lucky Friday Silver Lead Mines in the year 1945?

A. Yes, I have.

Q. Can you tell us, Mr. Emacio, what the financial condition of the Lucky Friday Silver Lead Mines was on about May of 1945?

Mr. Erickson: To which we object as incompetent and immaterial to any of the issues in this case, what the condition of another mining company was in 1945.

The Court: This is of the Lucky Friday, known as the Big Friday?

Mr. Etter: That's correct.

The Court: I think I'd better excuse the jury. The jury is excused.

(Testimony of W. J. Emacio.)

(Whereupon the following proceedings were had without the presence of the jury and one alternate juror.)

The Court: I am assuming that one of the contentions of the defendant is that the defendant in 1945 was not interested in the Extension, but that he was interested in the hope that the entire area which included where the Extension is located and where the Big Friday and the Gold Hunter, I think it is, and others were located, should be embraced in a central development project, and in connection with such contention I'm assuming that it is another contention of the defendant that such interest or contacts as he had with any plans or contracts involving the Extension or involving acquisition of property of the Extension was because of his larger interest, and I'm assuming that a further contention of the defendant is that such further interest as he had in this development through the Big Friday was because he was anxious that the Big Friday itself did not get all of the benefit, that he wanted the larger area to get it. My assumptions are not far afield, are they, Mr. Etter?

Mr. Etter: No, some of those assumptions are correct. We were in a big development program, but we weren't—

The Court: Now, the defendant is not to be precluded from either by himself or by other witnesses supporting his contention. It will be true, of course, that if the jury becomes convinced be-

(Testimony of W. J. Emacio.)

yond all reasonable doubt that Mr. Allen in connection with the Extension had done the things charged, that then he's guilty irrespective of the fact that he might also have been interested in the central development project. One is not necessarily exclusive of the other. It will be his position, I take it, that his interest at the time it is alleged the conspiracy was formed and flourished, that his interest was confined to the central development project, so on [1043] that theory of the defendant the defendant is entitled to submit evidence, although the jury is to be told that the establishment of the defendant's interest in the central development project does not relieve the defendant if the evidence further establishes that he was likewise guilty as charged with respect to the Extension.

Now, it's a little bit more difficult for me to understand the theory of the Big Friday's financial situation as a defense in this action. Assume the Big Friday was worth a great deal, or assume the Big Friday was badly insolvent, either one, what difference does it make here?

Mr. Etter: Well, it makes the greatest difference in the world, if I might suggest, your Honor, if the Big Friday was at a point where they couldn't sink a shaft or do any development work, and were without funds to proceed with mining work, and some of their officers was active, John Sekulic and others, in the promotion of the Lucky Friday Extension and the promotion of working contracts

(Testimony of W. J. Emacio.)

between the two of them and to enable them to use the money. It's a question of whether anything would motivate Allen to enter into a conspiracy to develop the Extension when as a matter of fact the condition of another company made it imperative to do something, and it will be shown that their interest and efforts in organizing the company not only built up their treasury, but raised their stock, and every benefit that occurred from the development of the Extension occurred to the Big Friday and not to the defendant Allen.

The Court: Well, let's assume all that's true. It's the theory of the government's case that whether the Big Friday was or was not profiting, that Mr. Allen and Mr. Keane intended to divert so much of the monies of the Extension as weren't paid to the Big Friday, to divert it so that it would come to their benefit. It's been conceded by the government's case that the Extension did pay the Big Friday a certain amount of money for putting in the shaft, which was more for the benefit of the Big Friday than it was for any other company. The question here is not whether or no the Big Friday wanted the Extension. The question is not here whether or not the Big Friday needed money. The question here is whether or not Mr. Allen and Mr. Keane planned to use the balance of the money that the Big Friday didn't get, insofar as they were able, for unlawful purposes.

(Testimony of W. J. Emacio.)

Mr. Etter: That's correct.

The Court: Now, it is conceded that the Big Friday got some money. It's conceded that that shaft was more for the benefit of the Big Friday than any other concern in that district. Now, what difference does it make [1045] whether the Big Friday in May of 1945 was sufficiently in debt that it couldn't sink a shaft itself? I'm asking you, what difference does it make?

Mr. Etter: The attempt has been made here and is being made all through the government's case to show as far as the defendant Allen is concerned in this case that he had to do what the government says he planned and conspired to do, to bail himself out. Now the question is, who was bailing out who? Was Allen bailing himself out, or was the Big Friday bailing themselves out with this promotion, and along with that, the testimony of the defendant Keane is that the defendant Keane was on the board of directors of the Big Friday at the same time that this occurred.

The Court: That's already in evidence.

Mr. Etter: Yes, it's in evidence, and the defendant Keane in testifying for the government was attempting to show that it was some benefit he had that accrued to Allen. His motive of course, I think is obvious, and we have a right to comment on it later as we did to inquire into it. If the proof of Mr. Allen would show there was no necessity or occasion for bailing out in the Montana Leasing in view of the money he was putting in and

(Testimony of W. J. Emacio.)

the money Keane was allegedly putting in from Independence, that there was no necessity, and we were not allowed to [1046] show the interest that Keane had in the Big Friday and that certain men in the Big Friday had in the development of the Extension, it absolutely precludes to be able to determine from the facts whether or not Allen had to bail out because he was an instigator and promoter of the Extension, or whether, as a matter of fact, it's an incident to show he was not a conspirator or promoter of the Extension, but was concerned with the central development program and his Neihart property, and if as a matter of fact the primary reason for promotion didn't rest with the officers of the Big Friday and their financial condition at that time. Now, that's our position.

The Court: Well, counsel, the fact that the Big Friday needed to be bailed out is not a defense if Mr. Allen and Mr. Keane coincidentally with such bailing out decided to benefit themselves——

Mr. Etter: I concede that, your Honor.

The Court: ——illegally. I don't think there's been any contention by the government that the only persons who would benefit by the Extension were Mr. Allen and Mr. Keane. The jury will necessarily be told that the fact that other persons may have benefited by it or may have been greatly interested in it makes no difference. As a matter of fact, it makes no difference, as I see it, whether Mr. Allen and Mr. Keane were the ones who first

(Testimony of W. J. Emacio.)

conjured up the theory of the Extension or whether John Sekulic was the man who first planned it. Mr. Keane and Mr. Allen either themselves imagined the Extension, or whether they climbed aboard someone else's vision, they still are guilty if before the mails were used they had the understanding between themselves that they would do what the government charged they agreed to and did do. Mr. Grismer of course says that it was a sort of a combination vision, and he's supported in that by Mr. Halin. Mr. Grismer was a government witness. Mr. Keane, another government witness, seems to think that no one had the imagination other than himself, and Mr. Allen, but I'll have to tell the jury that it doesn't make the slightest bit of difference.

Mr. Etter: Your Honor, I agree with you on the instruction and everything you've said, that the jury is properly instructed, as your Honor says, that it wouldn't make any difference if counsel was in the deal and profited from the beginning, if as a matter of fact the defendant and these people conspired to do what they did do, but I do say that is a matter of proper instruction to the jury, but Mr. Allen is entitled to be able to show these very facts so that the jury can determine, your Honor, whether or not his interest was such in it that the inference that followed, if there were inferences from which they have to [1048] deduce a feeling of guilt or a verdict of acquittal. They have to determine that from other facts. If the

(Testimony of W. J. Emacio.)

evidence is excluded and all the jury knows is what Mr. Allen did, of two or three things in connection with the Big Friday, and they don't know anything of Big Friday, the jury might take the position that the Big Friday and its officers were the sole promoters and organizers, but they can't take it or consider it if the evidence is excluded, which puts the Big Friday right in the middle of this thing to start in, mind you, after the thing was commenced, so-called, but before there was any inception of any alleged conspiracy.

Now the question is, Mr. Allen is charged with being a hidden promoter and organizer; he's been accused by Mr. Keane, as you say, of having the imagination. The question is, is that so, or is it not so? Hasn't the jury the right to know all the facts that are material, particularly where there's a contractual binding between the Big Friday and the Extension? Mr. Allen talking to Grismer, Mr. Grismer dealing with the Big Friday, Mr. Keane on the board; they have a right to determine who had the motive and whether it was good or bad, whether it was associated with the promotion on Allen's part of the Extension or the development program, and likewise whether it was associated with the Big Friday and developing [1049] the Extension, and following that, to look where the profit went. What if Allen can show he made no profit, and he wasn't part of the conspiracy? If he was able to show that, it may be entirely proper

(Testimony of W. J. Emacio.)

and possible that he can't show that to the jury unless he can in effect show that he wasn't a promoter and show affirmatively that these people were and that these people were in it before he heard of it, actively participating. I think those factors are all something the jury should consider, under your Honor's instructions. I think your Honor is entirely correct in saying that they should be cautioned about those things, but I feel very earnestly so far as my client is concerned that they have a right to consider those facts.

The Court: I excused the jury for two reasons. One, I to a degree wished to verify some of my assumptions as to the defendant's position. One, because I wished to make it clear to counsel that if certain evidence was introduced, that they should expect that the jury would be advised that regardless of how many other things may have transpired, if the conspiracy was one of the things that was occurring, that the defendant is guilty if the evidence so shows beyond all reasonable doubt. I had a further reason. Counsel has for a number of days been cross-examining. He's permitted on cross-examination to employ [1050] the strategy of the leading question, because he was cross-examining the witnesses called by Mr. Stocking or Mr. Erickson. He started in on the defense. Counsel is much like the man who had been driving in the country for a long distance and comes into the city and forgets the speed limits, and I'm very anxious that

(Testimony of W. J. Emacio.)

counsel avoid the use of leading questions. I'm not blaming counsel; when I tried cases I found sometimes that I was in the same position when I changed from cross-examining to handling my own witnesses I forgot and did what counsel has been doing. Mr. Erickson and Mr. Stocking of course on cross examination are to have the privilege of leading questions which Mr. Etter and Mr. Emigh did have, and therefore I'm most anxious that the defense counsel now avoid leading questions. I'm going to permit this matter to be developed to a reasonable degree, giving the jury such advice at the present moment as I deem appropriate. The jury may come in.

(Whereupon, the following proceedings were had within the presence of the jury and one alternate juror.)

The Court: The objection to the last question put to the witness is overruled. The jury will be allowed to hear the testimony for such assistance if any as such may be to the jury in determining what the true facts are. The [1051] jury will be advised now, however, that in the event the evidence when it's all considered convinces the jury beyond all reasonable doubt that Mr. Allen was guilty of one or more of the counts charged against him, then it will be the duty of the jury to convict Mr. Allen as to such count or counts, regardless of whether or not Mr. Allen may or may not at the same time as having been engaged in the offenses charged was

(Testimony of W. J. Emacio.)

interested in a central development program, and if the jury is convinced beyond all reasonable doubt from the evidence that Mr. Allen was guilty of one or more of the counts charged, then it will be the duty of the jury to convict Mr. Allen of such, even though the evidence may establish that the Big Friday was as much or more interested in the Extension than Mr. Allen, and even though it may be established that the Big Friday gained a great deal more benefit than any benefit Mr. Allen obtained. However, you may listen to this testimony about the Big Friday for such assistance if any as it may give you in determining whether or not Mr. Allen is guilty of the offense charged, and if after you've heard all the evidence you have a reasonable doubt of Mr. Allen's guilt as to any count, it is your duty to vote not guilty as to that count. You may proceed.

Mr. Emigh: May it please the Court, may we have an exception to the statement of the Court, as being in [1052] the nature of an instruction to the jury before the evidence is in.

The Court: What I have said to the jury is for the purpose of helping the jury understand that it's to hear all the evidence for such aid as it may be to the jury in determining the guilt or innocence of the defendant. After the evidence is all in and the argument has all been made the Court will instruct the jury as to the law. The defendant excepts, and objection is noted, and exception. You

(Testimony of W. J. Emacio.)

may proceed. I do not understand that you're objecting that what I've said is not the law, but you're objecting that it's premature?

Mr. Emigh: As to whether or not it is timely.

The Court: All right, you may proceed.

Mr. Etter: Read the last question.

(Whereupon, the reporter read the last previous question, as follows: "Can you tell us, Mr. Emacio, what the financial condition of the Lucky Friday Silver Lead Mines was on about May of 1945?")

A. Well, the way we kept our books, we were in development stage, and we had no closing, we never closed our books up to that date; all I can give you up to that time would be our bank balances.

Q. All right.

A. I say, I can't give our exact figures as to our finances [1053] other than our bank balance, due to the fact we were in development stage, and did not close our books; they were kept open. On May 31, 1945, \$7,997.00 in the bank.

Q. That was May 31?

The Court: How much?

A. \$7,997.93.

Q. And on that date what were the unpaid obligations of the company?

A. Well, it's pretty hard to state at that date, but we owed all the current bills for the month of May.

(Testimony of W. J. Emacio.)

Q. And what would those be, offhand?

A. I'd say possibly half of that.

Q. In other words, in the neighborhood of \$3500.00; and what was the condition in June?

A. June 30, 1945, we had \$2807.34.

Q. \$2800.00? A. Yes.

Q. And what unpaid obligations, if you know?

A. About the same amount, I'd say.

Q. About half? A. Yes.

Q. And what was the situation in July?

A. We had \$3,974.59.

Q. I didn't hear that, Mr. Emacio.

A. \$3,974.59. [1054]

Q. And the corresponding ratio, would you say, of obligations? A. Yes.

Q. And in August, please? A. \$2,309.97.

Q. And a corresponding obligation of about half, would you say?

A. I'd say approximately all.

Q. And in September?

A. That was as far as it went.

Q. That was as far—

The Court: What was that?

A. That's as far as my notice called for, just through the month of August.

Q. Now, is it true that on May 31, 1945, the \$7,997.93 that you've testified to, wasn't that a loan from the directors to the corporation?

A. In May, you say?

Q. Yes. I'll put it this way. Just immediately

(Testimony of W. J. Emacio.)

prior to the figure that you've given us, Mr. Emacio, did the board of directors loan or did they guarantee the loan of \$10,000 to the company?

A. Yes.

Q. They did, and these figures that you've given here, had the loan been paid back at that time, in May, June, July or August? [1055]

A. No, it hadn't.

Q. It had not been; it was then an obligation of the company.

The Court: CoCounsel, how long do you think the testimony of this witness will take?

Mr. Etter: I'm through.

The Court: Counsel, how long do you think the testimony of this witness will take?

Mr. Erickson: Three or four minutes, perhaps.

The Court: All right.

Mr. Etter: That's all, Mr. Emacio.

Cross-Examination

By Mr. Erickson:

Q. Mr. Emacio, do you know the defendant in this case, Mr. Allen? A. Yes, I do.

Q. And do you know whether or not the Lucky Friday—what the Lucky Friday sources of money were during these development months of June, July and August, 1945?

A. I think during that time we had one shipment, and a loan from John Sekulic.

Q. Was the mine in production at that time?

(Testimony of W. J. Enacio.)

A. We had one shipment during that period of time.

Q. And when was that shipment made, just approximately?

A. In August, we received the returns in August.

Q. And how soon was the contemplation of the directors that [1056] the mine would be in production? How soon in these months in June, July and August did the directors assume that the mine would be in production?

A. Well, at that time we had just completed our shaft down to the ten hundred, and the next shipment, we didn't know when to expect it, but the next shipment we had was in February of '46, nothing in between.

Q. During the time that the shaft was being sunk from the ground to the one thousand foot level, the directors never contemplated any shipments during that period, is that correct?

A. From where?

Q. During the time the shaft was sunk, the directors never contemplated any revenue from the mine during the sinking of the shaft?

A. You mean from the ten hundred to the fourteen hundred?

Q. No, from the ground to the ten hundred.

A. That was the only way we could sink it, was by returns.

Q. You got the ore to pay, then, as you went down, from the sinking of the shaft?

(Testimony of W. J. Emacio.)

A. That and by loaning, borrowing.

Mr. Erickson: Well, I believe that's all.

Mr. Etter: That's all.

(Whereupon, there being no further questions, the witness was excused.) [1057]

The Court: Counsel, is there any reason when you speak of the Lucky Friday you shouldn't call it the Big Friday, to differentiate it from the Extension? It's very easy for you gentlemen when you just speak of the Lucky Friday to know that you're speaking of the Big Friday, the company that was already established, but I would ask you at least to consider that for the sake of the jury and myself. All right, we'll be at recess until 1:35.

(Whereupon, at 12:05 o'clock P.M. the Court took a recess in this cause until 1:35 o'clock P.M.)

(All parties present as before, and the trial was resumed.)

B. W. PORTER

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Etter:

Q. Will you state your name, please?

A. B. W. Porter.

Q. Mr. Porter, I'm going to ask you to speak

(Testimony of B. W. Porter.)

out loud enough so that all the members of the jury and counsel can hear you. Where do you reside, Mr. Porter? A. Seattle, Washington.

Q. How long have you resided in Seattle, Washington? A. Since 1922.

Q. What is your business, Mr. Porter?

A. I'm in the mining business. [1058]

Q. You're in the mining business?

A. That's right.

Q. How long, Mr. Porter, have you been in the mining business? A. Since 1933.

Q. And will you state what your connection with mining has been, in what capacity?

A. Managing and financing.

The Court: Manager and what?

A. Managing and financing mines.

Q. Can you tell us, Mr. Porter, some of the mines that you have managed, or the enterprises?

A. The Silver Wreath Mine at Mullan, Idaho, since 1933, and from that I moved down to the Goldstone Mine at Salmon, Idaho, since 1943, and at the same time took on the War Eagle Mine at Salmon, Idaho, in 1943.

Q. And are you associated with those mines at the present time, Mr. Porter?

A. Very much so, yes.

Q. Will you state whether you are acquainted with the defendant, Mr. Allen?

A. Yes, I've known Mr. Allen since about, I think maybe about 1943.

(Testimony of B. W. Porter.)

Q. And are you acquainted with Mr. Francis Clayton Keane?

A. He's been my attorney off and on in Wallace since 1936.

Q. Since when, sir? [1059] A. 1936.

Q. You say he has been your attorney?

A. Yes, sir.

Q. And what particular kind of legal services has he performed for you?

A. Well, he drew up contracts for leases for me; he helped me file or refile on certain properties up there, staking claims, and then in 1946 I hired Clayton Keane to organize the War Eagle Mining Company and the Goldstone Mining Company.

Q. The War Eagle and the Goldstone?

A. That's right.

Q. And pursuant to that employment will you state whether or not Mr. Keane did organize those mining companies?

A. As far as I know he organized them, but he never completed them, and after oh, I don't know how many attempts to get the papers out of his office so that I could complete them, I gave up in disgust and took it to my attorneys Wetrick, Flood & O'Brien in Seattle, and they formed the present War Eagle Mining Company for me and the present Goldstone Mining Company.

Q. I see; now, at the time that you employed Mr. Keane to first organize these companies, was there a board of directors?

(Testimony of B. W. Porter.)

A. My board of directors, and I was never asked about the [1060] board, the companies that Keane formed—I may have to explain that; he said that he formed the companies, but he didn't give me any of the records, so I don't know what he did in the way of directors, but my directors in the beginning, since 1943, they have always been Dr. Edwin Le-Cocq of Seattle, and Emil Mottman is my secretary, he's the owner of the Mottman Department Store in Kelso and the vice president of the Cowlitz National Bank in Kelso, and even before the company was owned that was the board.

Q. Now, did you ever have any other transactions with Mr. Keane?

A. Well, yes, I've had a lot of transactions with Mr. Keane; what do you refer to?

Q. Well, other than a client-attorney relationship?

A. Well, I borrowed \$7800.00 from him.

Q. I see. When was that, Mr. Porter?

A. May 23, 1946, I think, but we'll check that if you wait a minute.

Q. You're using that to refresh your memory?

A. Yes, because I'm just guessing. The first deposit was made May 23, 1946, so the loan was negotiated probably a few days prior to that.

Q. What were the circumstances surrounding that loan, Mr. Porter?

A. Well, I asked him to organize the War Eagle

(Testimony of B. W. Porter.)

Mining Company, [1061] and I asked him for a loan of \$10,000, and it was understood that he would organize the War Eagle Mining Company so that I could go through the mails, in other words, S.E.C. it, and get it ready, and out of those funds I'd pay him back this loan. In addition to that I don't mind saying I told Mr. Keane I would take care of him out of my stock, but I didn't know how much stock I would get out of the deal.

Q. And did you negotiate the loan in accordance with your testimony?

A. Well, it didn't work out that way. I assumed there was \$10,000 in the bank, because I wrote the checks; understand, I never had these records. Mr. Keane would make the deposit and the bank statements were sent to his office, and I got them after we terminated this deal.

Q. Well, Mr. Porter, did you keep any of the records yourself?

A. What do you mean by that?

Q. Having to do with——

A. No, as I wrote the checks they all went to Mr. Keane's office. I wrote the checks and then they went to Mr. Keane's office, and how I got these back, August 26 or thereabouts I went into the bank, and Mr. Hannah, the cashier, said "You got here just in time; you had a \$100.00 overdraft, but I met Mr. Keane on the street and he gave me \$100.00 out of his pocket to cover it." Now, I had in [1062] that same bank another account under the name of

(Testimony of B. W. Porter.)

B. W. Porter that at that time had several thousand dollars in it, so I was disturbed when the bank told me I was overdrawn \$100.00, because I knew I hadn't used this \$10,000, so then I called Clayton Keane and we terminated this deal and from then on I used my own funds, so we never did get up to the \$10,000, but I thought at all times there was \$10,000.00 in the bank, and I was writing checks against the \$10,000.

Q. And what did the condition of your bank account reflect?

A. Well, here it is right here.

Q. Referring to it to refresh your recollection, what did your bank account indicate after you got that statement?

A. Well, it indicated that every time I'd write a check he'd run down and cover it, because the last check I wrote was \$35.49, and the last deposit was \$35.49, so evidently he'd run down to cover each check, so then, to get it all on the record while I'm on this check business, I called Mr. Keane not once but half a dozen times and asked him who I owed this money to, and he says "Frankly, Ben, I don't know" then finally I got a letter from Mr. Keane stating that I was to pay this money over to a board of trustees, and I turned that over to Mr. Wetrick of Wetrick, Flood and O'Brien, and it's being handled there at this time.

Q. Now, Mr. Porter, during the time that you negotiated this [1063] loan with Mr. Keane, did you discuss the matter with Mr. Allen?

(Testimony of B. W. Porter.)

A. Never did, and had no occasion to.

Q. Did you at any time from the beginning of the loan to the incidents closing it that you've disclosed talked to Mr. Allen?

A. Well, I've talked to Mr. Allen for years.

Q. About this loan?

A. No, never about this loan.

Q. And did Mr. Allen so far as you know have anything to do with your securing the loan?

A. To my knowledge he didn't, and this one check here I think will answer your question. In Montana I borrowed \$560.00 from Allen, because I needed some money for Salmon and I didn't know anyone in Butte, and he cashed a check for me. I gave Mr. Allen a check to the Lexington Mining Company, which I have here, for \$560.00. When I got this all back from Keane, as I say, I never terminated this until we terminated the whole thing, and I got back that \$560.00 check I had given Mr. Allen, and it came back N.S.F., but on Mr. Keane's statement he says "War Eagle, covered from Lexington in June, \$560.00" which does not reflect on War Eagle's statement; in other words, I had to add this to the amount I owed which was deposited, so I did.

Q. Now, who were the owners of the War Eagle property, Mr. [1064] Porter?

A. Well, the same owners that there were then; we have this on a lease, you see; Smoky Harris, I say Smoky because that's the only name he goes by; William Doebar, and Mrs. William Gies, who lives

(Testimony of B. W. Porter.)

in Spokane, they own the War Eagle; the Goldstone is owned entirely by Mrs. Isadore Gies, and I have those properties under lease and bond, but we don't own them, we still have that payment.

Q. Has Mr. Allen any interest in the War Eagle property?

A. No, nor neither does Mr. Keane.

Q. Did either Mr. Allen or Mr. Keane ever have any interest?

A. They certainly did not. As I told you in the beginning, if Mr. Keane had formed the companies, got them cleared through the S.E.C., I would have paid back this loan and given him some stock.

Q. But he did not become any owner?

A. Never.

Q. Neither did Mr. Allen?

A. Never. They haven't got a share.

Q. Are you acquainted with John Sekulic?

A. Very well, known him for years.

Q. How long did you know him?

A. I got acquainted in 1941 when I was developing the Silver Reef Mine.

Q. Is that property known by that name today? [1065]

A. No, it's the Hunter Silver Lead today; they have a lease on it.

Q. You say you became well acquainted with him at that time?

A. That's right, borrow tools, swap back and forth, and I've known him very well.

(Testimony of B. W. Porter.)

Q. Have you had any discussions with Mr. Sekulic about mining properties in that area?

A. Yes, I've discussed practically every mining property in that area with John.

Q. Have you discussed with him the formation of any companies during the time that you've known him up there?

A. I wouldn't put it that way; he's discussed with me the formation of companies; I've never discussed it with John that way.

Q. And what companies has he discussed with you?

A. Well, he wanted me to organize and develop the property adjoining his Lucky Friday, as early as 1943, possibly 1942, and——

Q. And what—pardon me.

A. ——to get the picture clearly before all of you, we were in John's kitchen in 1943 or 1943, and he pointed out the window, he says "Ben, I own that ground, and have for years; why don't you promote a company and organize it?" I says "John, I can't handle what I've got" but that was John's suggestion on that property. [1066]

Q. Do you know whether or not that property has now become——

A. That property today is the Lucky Friday Extension.

Q. And was that the only time, Mr. Porter, that he discussed that matter with you?

(Testimony of B. W. Porter.)

A. No, I think that was discussed many times.

Mr. Etter: That's all.

Cross-Examination

By Mr. Erickson:

Q. Mr. Porter, are you indebted, or is Mr. Allen indebted to you now at the present time?

A. Yes, he owes me \$700.00.

Q. And you're interested in helping him any way you can in this lawsuit?

A. I wouldn't state it that way, any more than I'd help anybody else. If Mr. Keane was here I'd tell just exactly what happened, if that's help.

Q. Now, Mr. Porter, did you receive some stock in the Lucky Friday Extension Mining Company to the extent of 95,000 shares?

A. Did I receive 95,000 shares?

Q. Yes. A. No, sir.

Q. Did you receive any stock in the Lucky Friday Extension Mining Company from Mr. Grismer?

A. Not a share.

Q. Or any stock in the Lucky Friday Extension Mining Company [1067] from any other person?

A. Yes, you bet.

Mr. Etter: Just a minute; I'm going to object to that as not being a proper question; he stated he didn't receive any from the defendants, now he wants to know if he received it from anybody. I think it's wholly incompetent, irrelevant and immaterial, unrelated to the direct examination, incompetent, irrelevant and immaterial to prove or

(Testimony of B. W. Porter.)

disprove any issue in this case, whether he got it from anybody.

The Court: Let me hear the question.

Mr. Erickson: I'll withdraw the question and ask a more specific one.

The Court: All right.

Q. (By Mr. Erickson): Mr. Porter, did you receive some stock in the Lucky Friday Extension Mining Company which you sold through Pennaluna and Company?

Mr. Etter: I'm going to object to that question as being incompetent, irrelevant and immaterial, as to whether or not Mr. Porter ever purchased any Lucky Friday Extension stock on the open market or from other people, and unless the question is confined to whether or not he purchased any from Mr. Allen or any other defendant, as being incompetent, irrelevant and immaterial to any issues in the case, incompetent to prove any issue against the [1068] defendant Allen, and improper cross-examination.

The Court: This is cross-examination, and I assume is intended as a preliminary question relative to such interest, if any, as the witness might have. The objection is overruled.

Mr. Etter: Exception.

The Court: You may read the question, Mr. Taylor; the witness may answer.

(Whereupon, the reporter read the last previous question.)

(Testimony of B. W. Porter.)

A. I personally did not.

Q. Did anybody acting as your agent receive such?

Mr. Etter: I'm going to object to that question. If it's preliminary, it's indicated now that there's certainly no connection; "Did anybody acting as his agent purchase such"; I'm going to object on the same ground as previously made.

The Court: I'll sustain the objection to that question.

(Whereupon, two checks were marked Plaintiff's Exhibit No. 123 for identification.)

Q. (By Mr. Erickson): I hand you Plaintiff's identification 123, two checks, the first check being a check from Pennaluna and Company dated April 3, 1947, for \$1400.00 addressed to B. W. Porter. Did you receive that check and endorse it? [1069]

A. Yes. These were both sold through my account by Jim Allen as a favor, and he used my account to sell them.

Q. You gave Mr. Allen permission to use your account to sell this stock? A. That's right.

Q. And this represented 95,000 shares of Lucky Friday Extension?

A. I didn't even know what the transaction was. He wanted the money for the payroll and wanted to use my account, and I let him use it.

Q. That's the only transaction you had with Pennaluna and Company on Lucky Friday Extension stock, is it not?

(Testimony of B. W. Porter.)

A. As far as I know that's it.

Q. And what did Mr. Allen say the reason was that he wanted to use your name in disposing of this stock?

Mr. Etter: I'm going to object as improper cross-examination, not within the issues in the case, and certainly not material or relevant so far as any issue made against the defendant Allen is concerned. The government has shown in here that the stock was sold; this is just twice proving. We admit that the stock was sold. It's incompetent and irrelevant and improper cross-examination, not brought out on direct, not concerned with any issue on direct.

The Court: How is this proper cross-examination? [1070]

Mr. Erickson: This will tend to show the interest of the witness with the defendant Allen, and will ultimately tie in with the sale of the Grismer stock, 1,229,700 shares issued to Grismer that found it's way through Allen and was sold through Pennaluna and Company.

Mr. Etter: It's already in here.

The Court: Objection overruled.

Mr. Etter: Exception.

The Court: You may read the question, Mr. Taylor.

(Whereupon, the reporter read the last previous question.)

(Testimony of B. W. Porter.)

A. ' He wanted to raise some money for the payroll.

Q. Well, did he say why he didn't want to use his own account?

Mr. Etter: Object to that as incompetent, irrelevant and immaterial and repetitious; it's already been answered.

The Court: Overruled.

Mr. Etter: Exception.

A. I didn't get the question; what was it?

Q. Did he tell you why he didn't want to use his own name in his own account to sell this stock?

A. He didn't tell me, and I didn't ask him.

Q. So that when you got the checks, then, you immediately endorsed them over to the Lexington Silver Lead Mines account, the second \$5,000 check, and the other check was [1071] deposited to your account, the \$1400.00 check, wasn't it?

A. I guess it was.

Q. In Seattle? A. That's right.

Q. So that the \$1400.00 check never went to Mr. Allen, then?

A. Well, yes, I'll say this, that there's lots of checks went to Mr. Allen.

Q. The proceeds from this \$1400.00 check didn't go to Mr. Allen?

A. Well, now, I'd have to go back into my records and see where that went. I frankly don't know.

Mr. Erickson: I offer 123.

Mr. Etter: Objected to on the ground that

(Testimony of B. W. Porter.)

they're incompetent, irrelevant and immaterial to prove any issue in this case, that it is improper cross-examination and brought in by improper cross-examination not brought out on direct, no proper foundation laid for the presentation of the checks to go to prove any issue in this case, and lead the jury to conjecture.

The Court: Let me see it. Overruled.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibit No. 123 for identification was admitted in evidence.)

Mr. Erickson: These are two checks, the first check being for \$1400.00 by Pennaluna and Company to B. W. [1072] Porter, and endorsed on the back "For deposit only, Seattle First National Bank, Main Office, B. W. Porter". The second check is to B. W. Porter for \$5,000 dated April 9, 1947, by Pennaluna and Company, and endorsed on the back "B. W. Porter, deposit to account of Lexington Silver Lead Mines, Inc.".

(Whereupon, three checks were marked Plaintiff's Exhibit No. 124 for identification.)

Q. (By Mr. Erickson): Mr. Porter, I'll hand you Plaintiff's identification 124, the first being a check dated May 9, 1946, payable to B. W. Porter, signed by the Lexington Silver Lead Mines Company, by J. A. Allen, and ask you what that's for?

A. I don't know.

Q. Did you receive that check?

(Testimony of B. W. Porter.)

A. I evidently did, if I endorsed it. Let me see the endorsement. That's probably right.

Q. Benevolent and Protective Order of Keglers endorsement appears on it; that's evidently where it was cashed, is that correct?

A. I would assume that.

Q. I hand you the second check dated October 30, 1946, payable to B. W. Porter for \$125.00 on the Lexington, signed by J. A. Allen, and endorsed on the back "B. W. Porter"; is that your signature? [1073] A. That's right.

Q. What did you receive that check for?

A. Well, I've advanced Mr. Allen considerable money over the past few years, and I suppose he paid me back.

Q. With a Lexington Silver Lead Mines check?

A. I don't know what he paid me back with, just so he paid me.

Q. I'll hand you the third check, dated July 1, 1946, to B. W. Porter for \$95.00 signed by the Montana Leasing Company, J. A. Allen, and endorsed on the back "B. W. Porter" and ask if that's your signature? A. That's my signature.

Q. Do you know what that check is for?

A. I had probably given him some money and he paid me back.

Mr. Erickson: I offer 124.

Mr. Etter: I object; I don't think that they're competent to prove any issue made in this case; irrelevant.

(Testimony of B. W. Porter.)

The Court: Overruled; admitted.

Mr. Etter: Exception.

(Whereupon, Plaintiff's Exhibit No. 124 for identification was admitted in evidence.)

Q. (By Mr. Erickson): Does Mr. Allen have a connection with the Hunter Silver Lead Company?

A. Yes, he has.

Q. Did he have at the time these dealings were going on? [1074]

A. That's what started our dealings.

Q. Who were the people that made up the ownership of the War Eagle Mines, you and who else?

A. Oh, I'd say five or six other people.

Q. Was Mr. Allen one of those?

A. No, sir; never has been.

Q. What arrangement did you make on behalf of the War Eagle Mines to borrow from Keane?

A. That Mr. Keane would organize a corporation, that this money would be paid back to him, and that I would take care of Mr. Keane along the way when I knew what I was going to get out of it.

Q. How much were you to borrow from Mr. Keane?

A. It states right here I think it's around \$8,000.

Q. And how much did you get from the promised \$8,000 loan, or the War Eagle Mining Company get?

A. You mean from the \$10,000 loan?

Q. Yes; you agreed on a certain loan; how much did you get?

(Testimony of B. W. Porter.)

A. About \$8,000 out of the \$10,000.

Q. So that there was \$2,000 you didn't get?

A. That's right.

Mr. Erickson: That's all.

Mr. Etter: That's all, Mr. Porter.

(Whereupon, there being no further questions, the witness was excused.) [1075]

HILLIARD POWER

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Etter:

Q. Will you state your name, please?

A. Hilliard Power.

Q. Where do you live, Mr. Power?

A. In Spokane.

Q. How long have you lived here, sir?

A. Oh, about since 1919.

Q. What is your present occupation, Mr. Power?

A. Assistant secretary, Spokane Stock Exchange.

Q. Assistant secretary of the Spokane Stock Exchange, and how long have you been such assistant secretary? A. About four years.

Q. And how long have you been associated with the Spokane Stock Exchange, Mr. Power?

A. Well, that period of time.

(Testimony of Hilliard Power.)

Q. And what are your duties as assistant secretary, Mr. Power?

A. Keep charge of the filings and prepare certain statistical information and odds and ends of business that have to be attended to, filings, correspondence, all the secretarial work.

Q. Now, statistical information, you say, gathering statistical information; what are the sources of your statistical [1076] information, Mr. Power?

A. The sales of stock and the clearing of transactions and information regarding quotations.

Q. And what do you mean by referring to quotations?

A. The price at which stocks are bid and asked or sold.

Q. And you have access to all of that information? A. Yes.

Q. And it's directly under your supervision as assistant secretary? A. Yes.

Q. What nature of stocks are traded on the stock exchange at which you are secretary?

A. Mining stocks, chiefly.

Q. Mining stocks chiefly? A. Yes.

Q. And can you state whether or not the Lucky Friday Extension is traded on the market?

A. It's not traded on the regular board.

Q. It's not traded on the regular board?

A. No.

Q. And how is it traded, sir?

(Testimony of Hilliard Power.)

A. It's traded in what they call the over-the-counter market.

Q. And what do you mean, over-the-counter market?

A. It's dealt in between brokers without passing through the exchange clearing. [1077]

Q. I see. You have access to information in reference to those transactions?

A. Access to information generally, except sales; no record is kept of sales.

Q. But as to prices? A. Yes.

Q. And bid and asked prices? A. Yes.

Q. And is such data kept on file at the Spokane Stock Exchange? A. Yes.

Q. And records are kept there evidencing these things that you've told us about? A. Yes.

Q. And they are under your supervision and control? A. Yes.

(Whereupon, graph prepared by witness Power was marked Defendant's Exhibit V for identification.)

Q. Do you recall that you were requested, Mr. Power, if you would prepare a graph in respect to the prices of certain stocks traded on the stock exchange some time ago?

A. You mean by Mr.—the defendant?

Q. Yes, by the defendant. A. Yes.

Q. And do you recall the names of the stocks involved in that [1078] survey?

A. I think it was New Hilarity, Lucky Friday,

(Testimony of Hilliard Power.)

and Hunter Creek, and Lucky Friday Extension; if I remember it there was four or five of them.

Q. The New Hilarity? A. Yes.

Q. And the Idaho Silver? A. Yes.

Q. And what information were you requested to show on the graphs, Mr. Power?

A. The market fluctuations over a period of several months.

Q. Over a period of several months?

A. Yes.

Q. And what months were those, do you recall, Mr. Power? A. I don't remember.

Q. Now, I'll ask you, or hand you, rather, the Defendant's for identification V, and ask you if you recognize that?

A. Yes, it's a graph I prepared several months ago.

Q. Now, what data did you use in the preparation of this graph, Mr. Power?

A. Made up an average by taking the stocks that were to be graphed, the bid quotations on the first of the month, the middle of the month, and the end of the month, and tallying them up and hitting an average and finding the month's average from that. [1079]

Q. I see, and what information did you use in the composition of the graph, the information that was at hand at the exchange? A. Yes.

Q. And was there sufficient information with which you were able to prepare this graph?

(Testimony of Hilliard Power.)

A. Yes.

Q. And the graph as it appears here is the graph which you prepared in response to that request?

A. Yes, I recognize it.

Q. And what months and years does that graph cover?

A. Well, it would be 1945, 1946, and 1947.

Q. I see. A. As I remember it.

(Whereupon, enlarged copy of Defendant's Identification V was marked Defendant's Exhibit W for identification.)

Q. Now, do you recognize Defendant's W for identification which I am holding here, Mr. Power?

A. Yes, it's a copy of the exhibit I just looked at.

Q. I see, and have you compared the exhibit marked identification W with that identification which you have just examined?

A. Not up to the present time.

Q. When did you compare it or examine it, Mr. Power? [1080]

A. I haven't examined one in comparison with the other up to the present.

Q. Oh, I see. Would it be possible for you in just a moment or two to compare these two, or would it require some time?

A. No, I can tell by the general—

Q. All right.

(Testimony of Hilliard Power.)

A. I would say that they're quite accurate copies.

Q. Would you say that is a correct and accurate transposition of the graph which appears which you have identified as Defendant's Exhibit V?

A. Yes.

Mr. Etter: At this time, your Honor, I would like after handing it to counsel to present these two exhibits, which are the original graph and an enlarged one of the same, in evidence.

Mr. Erickson: To which we object as incompetent and immaterial to any of the issues in this case. This purports to be the market value of stocks, which we all know are affected by the foreign situation and the international situation and the economic cycles of the country, and have nothing to do with the issues in this case, what the public is willing to pay for certain stock on a particular day or at a particular time.

Mr. Etter: The contention, your Honor, is made in the indictment that these individuals attempted to create [1081] or did create through the various acts alleged in the conspiracy a market demand for the particular stocks that the government has used from the particular companies, in the indictment. Our contention, of course, is to the contrary, and the evidence so far has disclosed that in part there was a general upturn in these stocks. We have taken these stocks as they appear upon the board to illustrate so far as the two involved here are

(Testimony of Hilliard Power.)

concerned, for the jury to compare them, under proper instructions, with regard to whether or not there is anything different or variable between those stocks and regular stocks that appear upon the board.

Mr. Erickson: I might state that the indictment does charge that these defendants by activity did create an appearance that the stocks would be of enhanced value, but that activity was alleged in the indictment as allegedly due to the activity that was already started and undertaken there, but this situation here combines many other factors which are wholly outside the scope of this case.

Mr. Emigh: It certainly negatives that allegation and the evidence touching on it from which an inference relating to that might be drawn.

The Court: Let me see the exhibits.

Mr. Etter: Your Honor, this one may be a little [1082] clumsy.

The Court: I don't think anyone will dispute that.

Mr. Etter: I might say that these read up and down, and they're transposed crosswise.

The Court: Well, as I understand it, one to a degree is a duplicate of the other?

Mr. Etter: Yes, your Honor.

The Court: Well, certainly both of them are not admissible, and the one which is the easiest to see is the one that should be admitted if either is admitted, so that the one confessedly clumsy will be

(Testimony of Hilliard Power.)

rejected. That's W. The objection is made only upon the grounds that it's not material?

Mr. Erickson: I would like to ask another question if the court rules on that, about the accuracy of this, on voir dire from the witness.

The Court: Well, of course if I rule and admit it, it's in.

Mr. Erickson: Well, I only had one question to ask; I never had an opportunity to ask it.

The Court: Well, you have the opportunity to ask if you wish; if you wish to examine voir dire you may, but if I rule first and it's admitted, your examination may be too late.

Mr. Erickson: I just have one brief question to ask.

The Court: Do you want to ask it now?

Mr. Erickson: Yes.

Voir Dire Examination

By Mr. Erickson:

Q. Mr. Power, was identification V prepared by yourself? A. Yes.

Q. And you had the knowledge to make this yourself from statistics you had available?

A. Yes.

Q. And that's accurate to the best of your knowledge?

A. To the best of my knowledge.

Mr. Erickson: I have no further questions on voir dire.

(Testimony of Hilliard Power.)

The Court: The objection is only made upon the ground of immateriality. This is defense. It's admitted for such aid if any as the jury may think it is to the jury. Objection overruled.

(Whereupon, Defendant's Exhibit V for identification was admitted in evidence.)

Mr. Etter: That's all, Mr. Power.

Mr. Erickson: There's no cross-examination.

(Whereupon, there being no further questions, the witness was excused.) [1084]

JAMES ANTHONY ALLEN

the defendant, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct Examination

By Mr. Etter:

Q. Will you state your name, please?

A. James Anthony Allen.

Q. And where do you reside, Mr. Allen?

A. In Spokane, Washington.

Q. And how long have you resided in Spokane, Washington?

A. Steadily since 1936.

Q. And you're married, Mr. Allen?

A. Yes, I am.

Q. What is your family composed of?

A. I have two daughters, one 20 and the other 17.

Q. Now, what occupation or what business are you now in, Mr. Allen?

(Testimony of James Anthony Allen.)

A. In the mining business.

Q. And state what positions you hold, if any, in any mining companies at present?

A. Well, I'm president at the present time, and have been since December 26, of the Lexington Silver Lead.

Q. December 26 of what year?

A. Of 1946. I'm president of the Pilot Silver Lead Mines, and have been president and treasurer of that since August of this year, August of 1948, rather, August 10, elected at a stockholders' meeting. [1085]

Q. All right, and are you engaged in any other mining business or operations at the present time?

A. Yes, several others.

Q. What are they?

A. Namely up in the Mullan district, which is the Hunter Silver Lead, the Lucky Friday Extension, the Hibernia, the Alma, and the Coeur d'Alene Consolidated.

Q. And at the present time you have interests, have you, then, Mr. Allen, in those various properties?

A. Yes, I have.

Q. Now, when did you first enter into the mining business?

A. Actively in management was in 1937. However, I had worked in the mines in Butte as a boy when I was about 15, to 18.

Q. I see, but the management part of it you say about what year, again?

A. 1937.

(Testimony of James Anthony Allen.)

Q. And with what company were you then associated, Mr. Allen?

A. The Callahan Consolidated.

Q. And where is that company located, Mr. Allen?

A. At Wallace, Idaho, in Shoshone County.

Q. I see. What was your position with the Callahan Consolidated?

A. I was vice president in charge of operations.

Q. And what operations did that cover, Mr. Allen?

A. Well, that covered the actual construction of the milling [1086] plant and the development of the mine, and after the mill was completed, then for the production of the ore from the mine through the mill, a regular mining operation.

Q. And you say you were superintendent of that particular operation?

A. I was vice president of the operation, but Joe Grismer was the active superintendent.

Q. And when did you first become acquainted with Mr. Grismer? A. I believe it was in 1938.

Q. You believe in 1938? A. 1938.

Q. What were the circumstances of your meeting him?

A. Well, the Callahan Consolidated were driving a long cross cut, or a long cross cut had been driven on what is known as the Red Monarch side of the Consolidated workings. It lacked about a thousand feet of being completed, on the thousand

(Testimony of James Anthony Allen.)

foot level, to raise up and make a connection with the shaft. Mr. Grismer was a well known contractor and director of several mines in the district, and particularly with shaft contracting and cross cut drifting, so he came to the office and put in a bid at so much per foot to finish up the cross cut.

Q. And what did your company do in relation to the bid?

A. We accepted his bid and he went to work for the company, first as a contractor, and then carried on later as superintendent. [1087]

Q. And did he complete his contract?

A. Yes, he did.

Q. And was he further employed by the Callahan Consolidated following the completion of the contract work? A. He is to this day.

Q. Where is the office of the Callahan Consolidated located with reference to the—not the town of Wallace, but in the town of Wallace?

A. Well, it's located—the office of the Callahan?

Q. Yes.

A. Well, it's located in the Gyde-Taylor Building.

Q. Were those the offices which you occupied when you were superintendent?

A. Well, when I would be in the office I would have an office, it would be Mr. Grismer's office personally, but I would be in the office when I would be there, and I spent perhaps two weeks out of each

(Testimony of James Anthony Allen.)

month, or maybe more, in Wallace at different times.

Q. In the office? A. Yes.

Q. Now, at that time, referring to I think you said about 1936 or 1938, were you acquainted with Mr. F. C. Keane?

A. 1936—I mean 1938?

Q. Yes. [1088]

A. I had known him, but I had never had any business with him. I was at one time, in 1929, I was engaged in the meat business in Kellogg, Idaho, and I had had an assignment for an account for a mine out on Pine Creek, and there was some litigation in connection with it, and Mr. Keane and Mr. Hanson were on the other side in the litigation, and I had met him then.

Q. In other words, you weren't—

A. No acquaintance with him at all, other than just to know who he was, and how do you do.

Q. All right. Now, did you have any relations with Mr. Keane while you were an officer of the Callahan Consolidated?

A. Yes.

Q. When was the first time that you had such relations, Mr. Allen?

A. I would say in the spring of 1943.

Q. The spring?

A. Yes, or about February or March of 1943.

Q. And will you state what the occasion was?

A. Perhaps maybe back in January it was. It was the early part of 1943. The Lexington operation in Montana, which at that time the directors were Mr. Donald Callahan of the Callahan Con-

(Testimony of James Anthony Allen.)
solidated, and Judge W. F. McNaughton of Coeur d'Alene and myself, and two others, the offices were all together in the Gyde-Taylor Building. The war came on, [1089] and the shortage of labor was rather acute at Neihart, and together with a serious raise in the price of materials and labor. The Lexington had an investment in Callahan.

Q. What did that consist of?

A. It was the purchase of a million shares of the Callahan Consolidated stock, which was invested for the purpose of constructing the mill and other mining development.

Q. At the Lexington property?

A. At the Callahan property. It seemed there was some litigation arose over the notes or over the payments in connection with the milling, and Mr. Keane was employed by the directors to handle the litigation. It seemed he settled the litigation with Sherm Smith.

Q. Who is Mr. Sherm Smith?

A. An attorney at law at Helena, Montana, who was representing the other litigants, and at that time a loan was advanced by Independence, of which Mr. Keane was president, and as attorney for the Consolidated, for the purpose of settling this litigation. I'm not too familiar with all the details of it.

Q. You say, though, that Mr. Keane represented your interests, that is, the Callahan interests at that time?

(Testimony of James Anthony Allen.)

A. Yes, the company's, the corporation's interest.

Q. Had he performed any other services up until that time for you or any company in which you were interested, Mr. Allen? [1090]

A. No.

Q. And where was his office located from where your office was located in the Gyde-Taylor Building?

A. Well, it would be right across the hall and down the hall maybe 20 feet on the corner, and the Callahan office is right in the center, Mr. Gyde's office is here, and Keane's here.

Q. On the same floor?

A. All on the same floor.

Q. Now, did you have any other discussions about mining with Mr. Keane about that time?

A. In the course of this settlement of this litigation at Helena the production of the Lexington prior to that was chiefly in silver and gold, and I think the '42 production was about a half million dollars, \$550,000. There was some dumps adjacent to and part of the Lexington dumps, that contained a fair lead and zinc value, and that would be about the only type of mine allowed to run during the war on account of the priorities. Keane became interested in it to the extent of wanting to run the dumps.

Q. Did he discuss it with you? A. Yes.

Q. And where did this discussion first take place?

(Testimony of James Anthony Allen.)

A. I would say right in the Callahan office or in his office, perhaps. [1091]

Q. Do you remember who went to whose office?

A. I think Keane came to our office.

Q. And did you have a discussion at that time?

A. Yes, we did.

Q. Now, was there any further discussion, Mr. Allen?

A. Yes, that the Independence Lead Mines had considerable money and large blocks of Clayton stock, and I think it had large blocks of Silver Syndicate, but at any rate, he wanted to invest the Independence money into another property.

Q. What did he say?

A. That he would like to invest into the Lexington, or to a company formed to take it over, with Independence funds, for the purpose of trying to bring in another mine like they had done at the Clayton, when the Independence financed the Clayton.

Q. What did you say, Mr. Allen?

A. Well, we thought it was a very good idea. At that time I owned the controlling interest in the Delaware Mines——

Q. Now, just a minute. Where was the Delaware Mines Company located?

A. Right in Wallace, Idaho. The Callahan Consolidated was purchasing it.

Q. And what was your connection there with the Delaware?

(Testimony of James Anthony Allen.)

A. Well, I owned about 60 per cent of the stock in the Delaware. [1092]

Q. At that time? A. Yes.

The Court: How much?

A. About 60 per cent.

Q. And did you say there was an agreement—what did you say about the Delaware and Callahan?

A. The Callahan was purchasing the Delaware Mines for \$75,000, the Delaware Mines property.

Q. At that time? A. At that time.

Q. I see. What was your further discussion then, if any, had with Mr. Keane?

A. Well, the result was that the Independence and the Delaware Mines would enter into this financing arrangement of the Montana Leasing Company which Keane had proposed, and did file the Articles of Incorporation in Helena, Montana, and that made——

Q. Now, what arrangements were made at that time, if any?

A. The arrangements were that both companies would invest the necessary capital into this corporation, for which they would receive a production note payable out of the production of the mine, and also a bonus of stock of the corporation; I think the Independence was to receive 14 or 15 per cent, and the Delaware a like per cent.

The Court: How much? [1093]

A. A like per cent.

The Court: 14 per cent?

(Testimony of James Anthony Allen.)

A. Yes, or in proportion to what money would be advanced, in that respect.

Q. That was discussed during these negotiations?

A. Thoroughly.

Q. Tell us what happened then, after the discussion?

A. Well, it's quite a while ago to remember it exact, but nevertheless it took form.

Q. Briefly.

A. The operation first started, the Montana Leasing took over the operations of the then Lexington by the lease of their milling plant and so forth, for running these dumps, on June 26, 1943.

Q. Now, after that, Mr. Allen, after the operation started, then what did you do?

A. For the first six months or perhaps the first year, I'll say, to maybe the middle of '44, I didn't pay too much attention to the Montana operation because of my confining to the Callahan Consolidated, but William Mullen Sr., who was then the director and secretary of the Independence, and Mr. Keane handled the Montana operations most of the time. It developed that the dumps were not profitable, that the cost and the recovery couldn't be obtained to make it profitable. There was additional ground adjacent [1094] to the Lexington, namely the Benton and the Ripple claims——

Q. Were you familiar with those claims?

A. Yes, I was. Negotiations started then in early 1944 which resulted in the acquiring of those

(Testimony of James Anthony Allen.)

claims on a lease and bond contract to the Montana Leasing Company or its successor, which was then to be the Lexington Silver Lead in 1944. Negotiations went on with the directors of the Lexington in 1944.

Q. Who carried on the negotiations?

A. Keane and myself.

Q. Who was that?

A. Mr. Keane and myself, Mr. Keane mostly, that the Lexington property would be put into the Lexington Silver Lead, that is, its plant and ground, and have its distributive share of stock in the new company. The Delaware Mines would put in its investment and receive a production note for the money it advanced, plus 5 per cent interest and a block of stock in the new company; the Independence would do likewise, and I believe the Articles were drawn sometime in 1944, but they hadn't been filed until later on.

Q. Now, the first year of your operation I think you said was from 1943 until 1944? A. Yes.

Q. And that you confined most of your efforts to the Callahan?

A. Mostly to the Callahan during that period.

Q. Were you engaged in any other interests at that time?

A. Yes, and in the Mullan district in connection with the Gold Hunter, which was just beginning to germinate at that time.

(Testimony of James Anthony Allen.)

Q. Are you acquainted with the Gold Hunter property? A. Yes.

Q. And where is it situated in relation to these different companies that have been mentioned here?

A. Well, it adjoins right within 500 feet of the Lucky Friday mine, the Big Friday, and it also adjoins the Extension, the Big Hunter workings on the 1200 foot level are only 300 feet from the end line of the Hunter Silver Lead, and the Hunter Silver Lead vein and the Gold Hunter vein are one and the same vein that goes through it. It adjoins the Pilot on the south; the Pilot adjoins it to the north.

Q. And what other companies are adjacent?

A. The Alma then adjoins the Pilot, and the Hunter Silver Lead to the north, the Hibernia joins the Hunter Silver Lead to the east, the Idaho Silver adjoins the Hibernia to the south, and the Homestake, owned by the Day Mines, adjoins the Hibernia on the south, the Hunter Creek adjoins the Hunter Silver Lead directly on the south. The Hunter Creek then is connected up with the Lucky Friday, the Big Friday, it joins right to the north and to the east. They're all in one mountain. [1096]

Q. These companies that you've described, are they all together as you've described them?

A. Yes, they are all contiguous and adjoining.

Q. And what work were you carrying on at that time with respect to those properties?

A. The idea was, and it developed pretty much

(Testimony of James Anthony Allen.)

in the dry belt, to put them all into a central development, because of the vein systems that traverse through there, and the extra-lateral rights that might arise through the various companies, it may be the apex of the vein on this property, but for another working it would be hit on another property; that a central working agreement be worked out for all, and that a development be done through the Gold Hunter mine, which had two or three miles of underground workings, and had a 600 ton mill, and was located right on the road and the railroad track, and had a production record of approximately twenty million dollars.

Q. What company was that?

A. The Gold Hunter.

Q. And did you carry on any active negotiations?

A. I did. Through that I met in Wallace, John Sekulic, who was then and now is the president of the Big Friday. John had told me in 1944 that the Gold Hunter could have been bought during the depression for \$100,000.

Q. Where did you have this conversation? [1097]

A. At John's house; it used to be a favorite place to go up to eat, from Wallace to John's house. He suggested the Gold Hunter, the Big Friday taking over the Gold Hunter on many occasions, or attempting to work out some consolidation with it, and also the ground adjoining right to the west, which is right in between the Friday and the Gold Hunter. John claimed he owned that ground at

(Testimony of James Anthony Allen.)

all times, and that it should be developed, even into 1944. I started carrying on negotiations with the owners of the Gold Hunter in February, January or February of 1945.

Q. Of 1945?

A. Yes, maybe January or February, and I think there was a phone call or two from Chicago, or from Mullan or Wallace, rather, to Chicago, to an attorney, Mr. George Bowden, in late 1944.

Q. You say you made that phone call?

A. Made the phone call, because he was acquainted with Mr. Murphy.

Q. And who was Mr. Murphy?

A. Murphy was an attorney for the Gold Hunter people in Chicago.

Q. Now, besides Mr. Murphy and the Gold Hunter people, had you talked about development of this property with any other mining men in that locality?

A. Yes, all of them. [1098]

Q. Would you name a few?

A. Well, Mr. Dunlop, of the Hunter Creek; the Days, who own the Homestake——

Q. The Days?

A. The Day Mines, yes; the Rothrock——

Q. Who did they refer to as the Days at that time?

A. At that time?

Q. Yes.

A. Well, Mr. Rothrock represented the Days. The Homestake ground was lying right north of the Hunter Creek.

(Testimony of James Anthony Allen.)

Q. And who owned that property?

A. The Day Mines owned it.

Q. And what other mining people, if you recall them now, did you talk with?

A. The Idaho Silver.

Q. And who were they?

A. George Mortimer, I believe, or Quinlan.

Q. Any others that you can remember?

A. The Vindicator, which was John Sekulic carried on most of the business of the Vindicator, which was Ingles of Mullan.

Q. Anybody else?

A. Grismer, who owned the Pilot, Joe Grismer.

Q. When did you first talk with Mr. Grismer about the Pilot property, Mr. Allen?

A. Well, I think Grismer talked to me about it.

Q. Do you recall when?

A. I believe it was sometime in '45.

Q. Sometime in '45?

A. He had talked to me over several properties in early '43 or '42. I invested \$2,000 with him in what he called the Radon property in Superior, Montana.

Q. With whom? A. With Grismer.

Q. Where was this property?

A. At Superior, Montana.

Q. And what was the name of it?

A. I believe he called it the Radon.

Q. And who owned it, you say?

A. Grismer.

(Testimony of James Anthony Allen.)

Q. That was the first time you say that you were interested in a mine with Mr. Grismer?

A. I wouldn't be positive of that; it could be before, but also the Silverton, he tried to get, asked me to go into the Silverton with him before.

Q. Where is that?

A. That's located down at Osborne.

Q. Where is that?

A. About nine miles southwest of Wallace.

Q. State what occurred on the Radon operation.

A. I invested about \$2,000, and the Callahan Company I think [1100] invested about \$4,000.

Q. In that operation?

A. Yes, and also the Western Silver, which he has and had then, and hadn't been incorporated, but which has since been, and in which he's active now, but I didn't go into that.

Q. All right.

A. But the Pilot, we were interested on the basis of it fitting into the general plan there, because all the veins of the Pilot dipped to the south, and there would be veins in the Pilot that would be hit on the Alma and the Hunter Silver Lead; there would be veins at the Hunter Silver Lead that at the 1200 foot level would be in the Hunter Creek ground; the same in the Vindicator; the veins in the Vindicator that dipped to the north would be hit in the Homestake ground; the veins in the Alma would be hitting into the Hibernia ground at that depth.

(Testimony of James Anthony Allen.)

Q. You're acquainted with that vein and structural system? A. Yes, I am.

Q. How have you become acquainted with it?

A. Well, from the study of the engineering reports that we've had on the properties.

Q. And have you made a complete study on all that property?

A. I have, thoroughly and intensively.

Q. Now, you say that you had some conversations with Mr. [1101] Grimer about the Pilot. Did you have any further conversations with him in 1945?

A. I believe that he had it optioned to someone in Spokane in 1945, and after the Extension stock had been sold the market was in such—the stock was sold overnight, the Extension and the Idaho Silver and the Hunter Creek were offered to the public, their original issue, about the same time; the stock was sold overnight by the underwriters, and it attracted the attention of everyone, the market on the stocks, of course. That's when I first became interested in the Extension, is after the stock had been sold and the market had gone in such a way. Grismer then I think cancelled his option or whatever he had in Spokane, and was going to form the Pilot Company himself.

Q. Now, you heard some testimony here about a meeting, Mr. Allen, in Pat's Cafe?

A. I did.

Q. Were you there? A. I was.

(Testimony of James Anthony Allen.)

Q. And will you state who was there at that time?

A. I believe there was John Sekulic, Wilbur Emacio, that just testified his morning, Keane, I'm not sure whether Ted Halin was there or not, I believe he was, there was Mr. A. F. McFee, there was Joe Grismer——

Q. And do you recall approximately the date of that discussion? [1102]

A. I couldn't pin it to the exact date, but it would be sometime in the month of May.

Q. Of what year? A. Of 1945.

Q. And will you state if you recollect what was said by the people there?

A. Sekulic had talked before on several occasions of the ground adjoining the Big Friday as being his.

Q. To you?

A. To me; and we paid no particular attention to it at that time; and that an Extension should be started like the Golconda, and work through the Friday. He again brought it up that night, and wanted those there to put in a thousand apiece, and his idea was to run a cross cut north from the then thousand foot level of the Friday to cut what is called the north vein that comes in on an angle. I was asked to go in for \$500.00, and I wouldn't do it. I believe McFee and two or three more did put up the \$500.00, but I was not interested enough in it to go into that, for that type of development, because it would avail nothing.

(Testimony of James Anthony Allen.)

Q. That was your opinion?

A. That's right.

Q. Now, was there a subsequent discussion at the Samuels Hotel? [1103]

A. I believe the following day in the Metals Bar, around 4:30 after coming out of the office, they'd been congregating there, it was brought up again by Sekulic. Those present there were Sekulic, Halin, myself, Horning, Keane, Elnacio, McFee, and three or four more.

Q. I see.

A. During the course of that day, sometime, they had been in there before I came in there, and I believe I came into the bar with Joe Grismer, because we both left the office together.

Q. That's the Callahan?

A. That's the Callahan office, and they had at that time decided on the contract, the working agreement between the Friday and the Extension; it was being called the Extension then by Sekulic and Horning and Keane.

Q. All right. Did you say anything at that meeting, Mr. Allen?

A. Not that I could be specific on, other than just the general conversation, and that Sekulic said to Joe, "You go up there and locate these claims, get hold of Lakes and go up there in the morning" and it was discussed back and forth, and I didn't pay any particular attention to it from then, other than until after the contract was signed.

(Testimony of James Anthony Allen.)

Q. What contract was that?

A. That's the first contract, between the Extension and the [1104] Friday.

Q. And did you have some conversation with somebody after that contract was drawn?

A. Yes.

Q. Who was that?

A. I asked Horning for a copy of it, sometime in July, and about at the same time I asked Joe to see it, and Joe said "I will" and he started cursing it, he said it's so one-sided. Well, we both looked at it, and they had a provision in it, what I was interested in was the manner in which he was preparing working agreements back and forth between the two companies. They had similar contracts in the dry belt, and it was the pattern that we were intending to follow for the central development with the five or six companies into it. I noticed in the contract any equipment that would be purchased by the Extension, and which they had to purchase everything, including another compressor for the Friday in order that there would be adequate air, tramming, motors, drill, steel, pipe and rail, that all of that equipment would become the property of the Lucky Friday.

Q. You mean the Big Friday?

A. I mean the Big Friday.

Q. Did you discuss that with Joe Grismer?

A. That's right, sometime in July. [1105]

Q. What was said about that provision?

(Testimony of James Anthony Allen.)

A. That it should be deleted.

Q. Who suggested that? A. I did.

Q. Was there anything further done in respect to that matter?

A. There was later on, when I was employed by the Hunter Creek to carry on negotiations with the Friday so that they would go out east on this Friday shaft into the Hunter Creek. There was a supplemental contract made to the original, which did delete that equipment provision.

Q. I see.

A. Another criticism we had of the Extension contract, that I had, was that it was on a fifty-fifty basis, with the Big Friday; the Extension had to put up all the money, and they were to get half of the profits and the Big Friday half. The Hunter Creek contract is seventyfive-twentyfive.

Q. What was your opinion of that part of the agreement?

A. Well, that it's not equitable for the Extension Company.

Q. And state what your reasons were for that opinion.

A. Well, other than the Extension bearing all the cost and assuming the risk of the investment, and it could be that the ore would be just marginal, there would be very little profit for it.

Q. Were there any other matters discussed with Mr. Grismer at [1106] that time? A. Yes.

Q. What were they?

(Testimony of James Anthony Allen.)

A. It took on, later on, I asked him what his stock position was, how much stock he was getting on Friday, and he said that was being worked out with Keane and Sekulic, and that he was to get about 600,000 shares, or perhaps more. We then, with the Hunter Silver Lead and the Alma and the other companies, we made an agreement that I would get 300,000 shares of the Extension, and he in turn would get stock in the other companies that I had in Mullan and that would be formed.

Q. You had an agreement with him on a stock exchange at that time?

A. That's right; that would go into perhaps September or October.

Q. That you first talked with him about that?

A. Well, it might have started in August.

Q. I see.

A. But it was just in connection with the stock that he was to get.

Q. Were you acting in any negotiations at that time with those companies?

A. For the Hunter Creek I was.

Q. And who were the people, Mr. Allen, who owned the Hunter [1107] Creek, or the majority of the Hunter Creek?

A. Well, Elmer Johnston of Spokane was heavily interested in it, and C. O. Dunlop of the Silver Dollar Mining Company.

Q. And were you paid for that participation?

A. Yes, I was.

Q. In what amount?

(Testimony of James Anthony Allen.)

A. I received 100,000 shares of Hunter Creek stock.

Q. I see, and what agreement was negotiated by you at that time for Hunter Creek Silver?

A. You say what was the agreement?

Q. Yes.

A. Well, it resulted in a working agreement, it was a working agreement with the Big Friday for the access through their shaft and to drift out east and northward into Hunter Creek ground from the 1400 foot level, which they agreed to put up money to help sink the shaft to the 1400 foot level.

Q. That was the Hunter Creek?

A. That was the Hunter Creek.

Q. During the course of those negotiations did you talk with Elmer Johnston, a lawyer in Spokane?

A. Many a time.

Q. You heard his testimony that you talked with him on several occasions about Lucky Friday Extension?

A. Many times, yes. [1108]

Q. What have you to say about that?

A. On Lucky Friday Extension, talked to him many times?

Q. Yes.

A. No. I've discussed Lucky Friday Extension with him perhaps later, in July, or August, or it couldn't have been before the forming of the company, because I believe that the Lucky Friday Extension, from the date of the record, we just received it today, those claims were located on the

(Testimony of James Anthony Allen.)

25th of May, and it seems to me that would take place from the day previously, to the conversation in the Metals Club with Sekulic, and this contract was entered into I believe in June.

Q. So what's your best recollection?

A. I would say that my first discussions with Johnston, if there were any in the month of June, would only be in generalities of the entire mining development of Mullan.

Q. Now, did you talk with Mr. Keane in respect to the Lucky Friday Extension?

The Court: I think this is a good time for a recess.

(Short recess.)

(All parties present as before, and the trial was resumed.)

Mr. Etter: Will you repeat the last question, Mr. Reporter, please? [1109]

(Whereupon, the reporter read the last previous question.)

A. I presume I had several conversations with Mr. Keane.

Q. Do you recall, Mr. Allen, what the nature of the conversations were?

A. Well, in the beginning I don't imagine they would be any more than just what publicity it might have been given in the preliminary stages of it. Keane was forming lots of corporations in his office;

(Testimony of James Anthony Allen.)

he was doing a lot of legal work. I didn't pay any particular attention.

Q. Did you have some discussions with Mr. Keane concerning your venture in Montana at Neihart during that period of time?

A. Oh, yes, on many occasions.

Q. And had you gone over there numerous times?

A. Quite often; quite often.

Q. After the first year of that operation, in which you said you remained more with the Callahan Consolidated, what was your relation with the Montana Leasing Company or the Lexington Silver Lead?

A. Well, with the Montana Leasing Company up to the time that the Lexington Silver Lead articles were drawn for the purpose of taking over all the contracts and all the properties and issuing the stock for the properties and the investment, I don't believe that I even had the right [1110] to sign checks in the Montana Leasing during 1944, '43 or part of '44. I'd be hazy on when it would be; it was after; I think it was sometime 'way later on that that.

Q. Speak up, now, so the jury can hear what you're saying. A. Yes.

Q. Now, had you done anything further about your development program in that area at that time, referring now to May or June of 1945?

A. Yes, we were carrying on active negotiations with the Chicago people in 1945.

(Testimony of James Anthony Allen.)

Q. All right, and what negotiations did you carry on at that time, if you can tell us?

A. Well, Mr. Bowden, the attorney in Chicago, had made a pretty complete examination of the Gold Hunter books over a thirty year period, and had the accounts showing the production and the amount of royalty that was being paid to the owners of the Gold Hunter.

Q. Had that information been communicated to you?

A. Yes, it had.

Q. And what did you do?

A. Well, John Sekulic and I discussed it, together with Cecil Dunlop of the Silver Dollar, and together with J. T. Halin, Mr. A. F. McFee, and Mr. Gibson.

Q. Who is Mr. Gibson?

A. The broker in Spokane, Mr. E. J. Gibson.

Q. And what did you do at that time, after this discussion?

A. Well, we addressed them to have them put a price on the Gold Hunter, and made an offer for \$250,000 for the outright purchase of the plant and the mine.

Q. Who made that offer to them?

A. I made the offer to them.

Q. And where was the offer made?

A. In Chicago.

Q. All right, when did you go back to Chicago?

A. I'll retract that. I believe the offer was made, the first offer, through Mr. Bowden in Chicago.

(Testimony of James Anthony Allen.)

Seems like I went back to Chicago sometime during the summer of 1945 to attempt to negotiate to close it.

Q. That was during the summer of 1945?

A. That's right.

Q. Was that at the time when the Lucky Friday Extension was being organized?

A. That's right.

Q. And you went back to Chicago?

A. That's right.

Q. Now, do you recall how long you were back in Chicago?

A. I think I was three or four days there at that trip.

Q. And what did you do while you were in Chicago?

A. I had three days with Mr. Murphy in his law offices in the LaSalle Building. [1112]

Q. And who is Mr. Murphy?

A. He's the attorney for the owners of the Gold Hunter, and I believe secretary and treasurer of the Gold Hunter Corporation.

Q. And who were at that time the owners of the Gold Hunter?

A. The owners were the Keely estate of Chicago, that own the Keely breweries, and the Ryans of Minneapolis, that have the Three-Star Hennessy.

Q. They were the owners of the Gold Hunter?

A. They were the owners of the Gold Hunter; there's about nine that own it.

(Testimony of James Anthony Allen.)

Q. And you talked to Mr. Murphy back there?

A. That's right.

Q. What was the nature of your discussion?

A. I made him an offer of \$250,000 for the Gold Hunter Mine.

Q. And what authorization did you have for making that offer?

A. Well, I had the authorization, Mr. Halin was going to go in on it, Mr. McFee, and Mr. Gibson.

Q. And were there any respective amounts that had been committed by those gentlemen in the purchase of the Gold Hunter?

A. Mr. McFee had committed to \$100,000.

Q. And what were the others?

A. I think Mr. Halin's was \$25,000, and Mr. Gibson was going to have the rest; he had some other associates that were [1113] going to put up the balance, and in addition, the Lucky Friday, there were several discussions with Judge Featherstone, John Sekulic, and Horning.

Q. Who had those discussions? A. I did.

Q. Was that prior to or after your trip to Chicago?

A. I believe that was prior to, but we had the information from Mr. Murphy as to what the physical value of the Gold Hunter was.

Q. And will you state what was the nature of those discussions with those people whom you've named?

A. They were interested in acquiring it, but their

(Testimony of James Anthony Allen.)

only manner of putting up any cash would be of selling some of the treasury stock of the Big Friday, and they wanted 60 per cent of the Gold Hunter if they went into it, which they were agreeable to put up \$150,000. We were not interested.

Q. Who do you mean by "we were not interested"?

A. Well, I, for one, or McFee, or the rest, were not interested in giving them 60 per cent of the corporation.

Q. So what was the result then of your talks with Mr. Murphy in Chicago?

A. Their price then, he wanted \$450,000. At that time, about that time, the government put a premium on lead and zinc production, a bonus plan. The lease was at the Gold [1114] Hunter, there were about fifty men working under a lease. The contract with the lessors was that the Gold Hunter Mining Company get 15 per cent of the total net smelter returns, and 50 per cent of the A bonus which the government was then paying, and I believe that amounted to about three cents a pound on lead.

Q. And that was the situation at the time that Mr. Murphy set this price for purchase?

A. That's right.

Q. And what did you say then to Mr. Murphy?

A. Well, of course \$450,000 was absurd.

Q. Did you tell him that?

A. Yes, and I continued the offer of \$250,000.

(Testimony of James Anthony Allen.)

Q. You continued that offer?

A. That's right, I did.

Q. And did you have any further conversations after that with Mr. Murphy in Chicago?

A. In March of 1946 I again went to Chicago.

Q. And what was the purpose this time of your trip?

A. That was to renew again the offer, and we would come up, I think to \$350,000, but wanted time on the \$100,000, because we figured it would take——

Q. Who do you mean by "we" again?

A. Well, Mr. Lakes made an examination of the Gold Hunter. Mr. McFee was perhaps the principal one in this, with the [1115] associates. We had had several discussions on it, and after talking with Mr. Lakes and as to the physical condition of the underground workings of the Gold Hunter, which could be, on the 1200 foot level, go right out into the Lucky Friday and the Extension and the Hunter Silver Lead and right out into the Pilot to the north, it would require about one hundred some thousand dollars for the repair of the shaft.

Q. Which shaft?

A. The Gold Hunter shaft and the skip pockets in the shaft, so we felt that the price of \$200,000 or \$300,000, depending on the additional money that would have to be put in, was more than the property would be worth.

(Testimony of James Anthony Allen.)

Q. And you say that you came to that conclusion after Mr. Lakes' examination?

A. To the conclusion that you couldn't pay more than a quarter of a million dollars for the property.

Q. I see, and how long—

A. I went back then in March to renew that offer with Murphy, to see if something could be worked out.

Q. Have you been back to Chicago to talk to Mr. Murphy since March of 1946?

A. Yes, I went back in December of 1947.

Q. December of 1947?

A. Yes, I was there on December 10 with my wife and daughter. [1116]

Q. All right, and what was the purpose of that trip?

A. The express purpose of that trip was to further not renew this offer of that amount, because the associates we had at that time were pretty well dropped out, but it was to attempt to renegotiate; but the main purpose of that trip, now, sometime in August of 1945, and I didn't know this until 1947, Murphy of the Gold Hunter served a notice on the Extension and the Lucky Friday Mining Company sometime in August of 1946 that if they continued further with their drift into Extension ground, they'd be encroaching on Gold Hunter ground, and he described the ground to them and told them he would get out an injunction and stop any further work, because the cross cut in his opinion was then

(Testimony of James Anthony Allen.)

in Gold Hunter ground. Grismer and myself in 1947, after we had come into the companies——

Q. Just one moment; did you say that he gave you this information in 1947?

A. In 1947, in the early part of 1947.

Q. And had you known about it before that?

A. I didn't; I did not. We then took it up with Sekulic, and he laughed at it; he said, "Oh, if there is any claim"—they claimed one of the claims of the Extension, that that claim was located on the Gold Hunter homestead. There was discussions with Sekulic and with Horning; Horning laughed at it, and said he'd never let them down in the mine anyway to determine it, so we employed Axel Johnson——

Q. Who do you mean, "we"?

A. Mr. Grismer and myself, or the Extension Company, and had Mr. Johnson make a survey of the Extension ground.

Q. This was when?

A. 1947, and I have his map, and tied it in with the Friday shaft survey, the Friday shaft and the drift as far as it had been driven into Extension ground. His findings were that the cross cut was in that ground about 20 or so feet, that the Lucky Friday claim end line had to be shoved back 300 feet from what they thought they owned, which left it that the cross cut is just 300 feet from the shaft, and in Gold Hunter ground.

Q. What did you do then, after that survey?

(Testimony of James Anthony Allen.)

A. We made several demands on Horning and Sekulic to do something about it.

Q. Who made the demands?

A. Grismer and myself.

Q. What were the nature of these demands?

A. Was to make some arrangement with the Gold Hunter, or correct the title to those claims for the Extension Company. As I say, they'd laugh; not laugh, but pay no attention at all. In fact, they were sore at us because we had thrown Keane out.

Q. I see.

A. I went back in December and took it up with Mr. Murphy, and asked Murphy—I had been elected president of the Extension Mining Company on August 8 of 1947, and asked Murphy to show me the notices that he had sent, and when it was sent, which he did. He showed me the maps as to what they considered their Andretti-Salvatori claim.

Q. Who was showing you this?

A. Murphy, in Chicago, in his office. I asked him, while we were not conceding, that is, the Extension Company would not be conceding that was their ground, what arrangements could be worked out for the continuation of the development of it, if these companies would be going into the central development. He said he would have nothing to do with the Extension Company, and it was not because he had any personal animosity for any of the directors or the personnel in it, but in his opinion the contract between the Extension and the

(Testimony of James Anthony Allen.)

Friday, the Extension did not have the right of a permanent easement to the use of the Friday shaft. He said he would work out anything what he thought was reasonable with the Friday people, and they in turn could then work it out with the Extension. I asked on what terms—there was two claims, one out here, and here is the Friday shaft; one claim comes here, known as the Molly No. 3; below that is what is called the Dinty claim; [1119] the Lucky Friday vein strikes into that, and the known vein strikes into the Molly. He said he wanted 50 per cent of the net returns of any ore found in the Dinty claim, without any cost to them, and 10 per cent of the ore found in the Molly No. 3 claim.

Q. Had these claims been located by the Lucky Friday Extension?

A. These are the two claims that John Sekulic said he owned and had Grismer locate.

Q. After this conversation did you remain in Chicago?

A. I left and came home about the 13th of December, and I immediately communicated with John Sekulic on the telephone, Joe Grismer made two or three trips, I believe, to his house, and I told John that conversation with Murphy, and that they would have to initiate it for the reason that he wanted to have his contract with the ones that owned the shaft, and then he would only give a five year contract for any one period.

Q. Did you say anything further to Mr. Sekulic?

(Testimony of James Anthony Allen.)

A. I don't recall; there perhaps was a little more conversation than just that in connection with this, but that he had better do something about it.

Q. Did you make a demand?

A. Repeated demands on him; that was in the nature of a demand. We insisted on it. [1120]

Q. Did you give him the reasons?

A. Exactly.

Q. What did you say to him?

A. Told him he didn't own the ground, in Mr. Murphy's opinion.

Q. What else?

A. And that the injunction was there, and for them to do something about it, or at least re-form the contract.

Q. What contract?

A. The original contract of the Extension, to where it could cope with this interest of the Gold Hunter, if that could be worked out.

Q. Was anything further done then by Mr. Sekulic or Mr. Horning or any of the Big Friday people?

A. Not a thing; I think they started a stockholders' committee in Mullan and tried to throw us out.

Q. What did you do then, your company?

A. We brought a suit against the Friday to recover \$100,000, or ninety-two thousand and some dollars that had been spent in the Friday by the Extension, and asked for a reformation of this contract.

(Testimony of James Anthony Allen.)

Q. All right. Now, after the first year of the arrangement for the financing of the Lexington Silver Lead and Montana Leasing, did you go over to that property at Neihart?

A. After the first year, you say? [1121]

Q. Yes.

A. I made one or two trips in the first year, maybe three or four, but after that, why, I'd be there a good portion of the time.

Q. And were you quite active over there in that property? A. Yes, I was.

Q. And what was your position?

A. Well, I was in charge of the operations.

Q. You were in charge of the operations?

A. Yes.

Q. And what did the operations consist of?

A. Well, it consisted of driving the drift on the vein in the Flora ground, and starting several stopes, for which there had been some production, we had intermittent production, until we got back into where the ore chute was longer.

Q. How many men did you have working over there at that time?

A. I would say 20 to 25.

Q. That would be in what year?

A. 1945.

Q. 1945; and how long did that work continue at various stages?

A. Well, it continued up until the time of the indictment, as far as I was concerned, but it continued on through 1945 and 1946. [1122]

(Testimony of James Anthony Allen.)

Q. And you were up there, as you say, in the same capacity during that time? A. Yes.

Q. Now where were the books of the Lexington Silver Lead kept, Mr. Allen?

A. All the books of the Lexington Silver Lead, and the financial statements, bank statements, checks, and any ledgers incidental to those were in Mr. Keane's office, the same as with the Delaware Mines.

Q. And did you have access to the records, that is, the bank records and the statements and checks of the Lexington Silver Lead Mines throughout the years 1943, 1944, 1945 and 1946?

A. I did not.

Q. Did you have access—

A. I perhaps might have had access to them, but there was no occasion during those periods, at the time, to make too much of a demand for them.

Q. Did you have any conversations during those years with Mrs. Vermillion, in Mr. Keane's office, who testified here? A. No.

Q. No conversation?

A. You mean with respect to what?

Q. With respect to the Lexington Silver Mines.

A. Oh, yes, lots of conversations.

Q. What was the nature of those conversations?

A. Well, a good many times Mrs. Vermillion would deposit my personal checks to the Lexington Silver account.

Q. And the account was maintained where?

(Testimony of James Anthony Allen.)

A. At the Idaho First National Bank.

Q. Did you send numerous checks of your own during this period of time——

A. I certainly did.

Q. ——to Mrs. Vermillion? A. Yes.

Q. And did you give her instructions with respect to those checks?

A. To be deposited with the Lexington Silver Lead account.

Q. And how long did that continue, starting with 1944?

A. It continued up until I believe November of 1946.

Q. Did you have any conversation with Mr. Keane in respect to the organizing of the Lucky Friday Extension? A. No.

Q. Did you have any conversation with him with respect to the articles of incorporation?

A. Never. I don't know that I've seen the articles yet.

Q. Of the Lucky Friday Extension?

A. That's right.

Q. Did you have any conversation with Mr. Keane with respect [1124] to the organization of the Pilot Silver Lead Mines? A. I did not.

Q. Did you participate or aid in the drawing of the articles of incorporation, Mr. Allen?

A. Of the Pilot Silver Lead?

Q. Yes. A. Never; never did.

Q. Have you ever had access to the books and

(Testimony of James Anthony Allen.)

records, referring specifically to bank checks and bank statements, of the Pilot Silver Lead Mines Company? A. Never have.

Q. Have you had any access to the checks or bank statements or otherwise of the Lucky Friday Extension Company? A. Never have.

Q. Did you have access to the records, referring specifically to the bank statements and checks, of the Delaware Mines Company?

A. Did I have access to those?

Q. Yes.

A. They were all kept in Keane's office, where all the banking was done, but I might have had the access to them if I so desired. I've never made the demand for them.

Q. I see.

A. But I've never looked at them, either.

Q. Did you have the access or have you ever had access to [1125] the account of the Montana Leasing Company?

A. I might have had, had I made inquiry for it.

Q. Did you ever make inquiry for it?

A. No, I didn't. I did around in June of 1947, I made inquiry at the bank.

Q. Was that the first time, Mr. Allen, that you had inquired about that account?

A. At the bank?

Q. Yes. A. Yes, it was.

Q. That you had requested access?

A. Yes.

(Testimony of James Anthony Allen.)

Q. What happened at that time?

A. I was refused access to it by Mr. O. L. Jones, the manager of the bank.

Q. And what reason did Mr. Jones give?

A. On the grounds there was not a resolution on file in the bank, while he knew that I had written checks on it, there was not a resolution showing my authority to, and he was a little reluctant, in fact, refused, because of what legal complications he might get in if he did let me examine it.

Q. All right; now, what was the first time that you examined or saw the financial statements and checks concerning the Lucky Friday Extension?

A. It was on January 15, in the district attorney's office, Mr. Erickson.

Q. Of what year? A. Of 1949.

Q. And when was the first time that you had access or did see the checks, financial statements and otherwise of the Pilot Silver Lead Mines?

A. I don't know that I've seen those yet. If it was, it would be in the district attorney's office. I beg your pardon, I did see one or two of those in May of 1947, I made a trip to Seattle to confer with Mr. Denney and Mr. Stocking, after two or three telephone calls by myself and Grismer asking why we couldn't have access to those checks for the purpose of making an audit, and I made a trip to Seattle, and I believe I saw one or two checks and asked a few questions, and later on Mr. Randall went into Keane's office and audited the financial

(Testimony of James Anthony Allen.)

records he had, and we did get a copy of the audit.

Q. Did you get permission then to have a certified public accountant make an audit of the books of those two companies, that is, referring to Lucky Friday Extension and Pilot Silver Lead?

A. Yes, we did.

Q. And what happened pursuant to that permission?

A. He went to Keane's office where the records were kept [1127] under subpoena, and made the audit.

Q. And did you receive copies of the audit?

A. We received copies of the audit.

Q. And are those the copies of the audits that are here in evidence as exhibits for the defendant?

A. They are.

Q. Now, when was the first time that you had access or examination of any of the Montana Leasing Company financial reports, I should say, or checks?

A. It was about January 15 in Mr. Erickson's office.

Q. And you say that's the first time that you've had the examination of any of those?

A. That's right.

Q. Now, did you ever make any demands upon Mr. Keane or Mrs. Vermillion or any other person in Mr. Keane's office to examine the bank statements of the Lucky Friday Extension, bank records and checks?

(Testimony of James Anthony Allen.)

A. I made a demand sometime in September of 1946.

Q. Do you remember the circumstances of that demand?

A. Yes. I had asked Mrs. Vermillion, it wasn't in the nature of a demand at all, to forward down to me the bank statements, to mail them, not the cancelled checks, just the bank statements, so that I might check my deposits of the cancelled checks I had against the deposits that showed on the bank statements. That was on a Friday. She said [1128] that she would do it that night. This was in 1946. There were some other records that Mr. Grismer was going to bring down on Saturday. He was to get them at 11 o'clock. He went to the office at 11 o'clock, and she wasn't there. Mr. Keane, Mr. Horning, Mr. Jones and three or four more were over to Missoula to a football game, it was the date of the Idaho-Montana football game. Mr. Grismer called and said she wasn't there, so I called her in the afternoon and asked if she had mailed out the bank statements as she promised——

Q. May I interrupt? What company's records are you talking about?

A. Talking of the Montana Leasing Company bank statements. She said she had been ill, and couldn't go to the office, but that she would get them out Monday. On Monday Grismer was in the office, and she was talking long distance to Keane, who was at Missoula, and Grismer heard Keane tell her over

(Testimony of James Anthony Allen.)

the phone, he says "Allen is through, and been through a long time ago, and will get nothing"——

Mr. Erickson: Just a minute; I object here; maybe I don't understand, did you hear this conversation?

A. Mr. Grismer repeated to me what Mr. Keane said over the phone.

Mr. Erickson: I move it be stricken.

The Court: Well, ordinarily that would be stricken, [1129] but there's a charge of conspiracy, and I think the evidentiary rule works both ways.

Mr. Erickson: Yes, I didn't quite understand; was that Grismer?

The Court: Yes, he says that Mr. Grismer says that Mr. Keane said something over the phone to Mrs. Vermillion.

Mr. Erickson: Then I have no objection.

The Court: Objection withdrawn.

Q. (By Mr. Etter): Will you continue, then, Mr. Allen?

A. I called her back, I called Mrs. Vermillion, and asked her if that was true, and she says, "Yes, my instructions are to give you nothing."

Q. When did you call Mrs. Vermillion back?

A. It would be the following Monday, and I think it would be September 28, or some such date.

Q. And did she—what did she say to you, exact words?

A. She said that her instructions would come from Keane first, that she'd have to carry out Mr. Keane's instructions.

(Testimony of James Anthony Allen.)

Q. And you did not, or did you, see the records?

A. Never did.

Q. Did you have any conversation with Mr. Keane concerning the keeping of the Lexington Silver Lead or Montana Leasing records in Mr. Keane's office?

A. Oh, yes, in the beginning everything was to be kept in his office; we just left all the legal work, all the [1130] financial transactions, all the books, for Mr. Keane.

Q. And did you have occasion to discuss the financial condition of the Montana Leasing and the Lexington Silver Lead with Mr. Keane during the year of 1945?

A. Yes, on many occasions.

Q. And what was the nature of those discussions, generally?

A. Well, the investment was running—we were not into production, that is, continuous production, but it was expected 'most any time that it would be, and of course there were a good many obstacles unforeseen that had come up during that period, because as I say, of the shortage of labor and materials and so forth, but there was never any grave concern; there was never any question in my mind but what there wasn't adequate finances to carry out what we were doing.

Q. What was the financial condition of the Lexington Silver Lead, let's put it this way, as to its operating costs in Montana and the money available to pay those costs?

A. At what period?

(Testimony of James Anthony Allen.)

Q. If you know, in 1945?

A. Well, there would have been plenty of money. The operating cost of the mine——

Mr. Etter: Just a minute, now; may I just have a moment, your Honor?

The Court: You may. [1131]

Q. (By Mr. Etter: Can you refresh your recollection from those records as to what your operating costs were in the operation of the Lexington Silver Lead Mines property at Neihart, Montana? A. For the entire year?

Q. For the year 1945.

A. The operations of the mine for the year 1945 was \$71,598.67, that is the capital investment.

The Court: How much was that?

A. \$71,598.67.

Q. And was there any income from operations that year?

A. That would be less the proceeds, yes; there was \$12,066.20 production.

Q. And then what was your net operating loss in the year 1945?

A. Well, it wouldn't be classed as a loss; it would be a capital investment over and above the production, because it was development, and not a loss in the operation; \$71,598.67.

Q. That would be an operating cost, at least?

A. That's right, over and above the production.

Q. For which you did not receive income from the mine operation? A. That's right.

Q. Now, the book from which you're testifying,

(Testimony of James Anthony Allen.)

was that book made up under your direction? [1132]

A. Yes, it was.

Q. And from what record?

A. From the mine records, kept at the office of the mine.

Q. And who kept those records at the mine?

A. The general superintendent and the book-keeper at the mine, and those were under my direction.

Q. And did you assemble those sheets each year?

A. I helped, yes.

Q. And those are the figures from which you're refreshing your recollection? A. That's right.

Q. Now, you heard the testimony here by Mr. Keane that in the middle of 1945 you and Mr. Keane had to figure something out to bail yourselves out? A. I did, and that's—

Q. What have you to say to that statement, Mr. Allen?

A. Well, it's not only the worst falsehood that was ever spoken, but it's a ridiculous statement.

Q. Why do you say that?

A. Well, after seeing the Independence audit, and having the Delaware records, the royalties paid during the year for the Delaware Mines Corporation, which was investing all of its money, in addition to my personal investment, if Mr. Keane's audit of the Independence was correct, which was committed to the financing the same as the Delaware, the [1133] operations at the mine for the month of January of 1945 was \$6,140.08; February.

(Testimony of James Anthony Allen.)

\$6,642.53; March, \$6,341.04; April, \$5,077.41; May, \$5,976.94; June, \$4,971.67; July, \$6,007.74, and August, \$4,266.87. If \$3,000 a month additional expense was added to that, there would still be a balance in August of twenty some thousand dollars.

Q. A balance of twenty some thousand?

A. A balance ready for finance between the Independence and the Delaware and combined with what I personally put in, not knowing what Mr. Keane might have put in.

Q. There would have been \$20,000 in the black?

A. Yes, assuming there was an additional \$3,000 a month, that I don't say there is.

Q. I see. Did the company at that time have any other obligations?

A. None whatever, excepting what outstanding payroll checks that would always be in float, of maybe a thousand dollars. The only other indebtedness they had would be the commitment to the Independence Lead Mines and the Delaware Mines, which was not a pressing obligation, and which was to be paid out of the production. It was an investment in the Lexington, and not a loan of money.

Q. Did the company owe any other than what you've mentioned?

A. None whatever, excepting the contracts for the acquisition of the property, which were not a liability, but were [1134] payable out of the smelter returns.

Q. I see, and that was the condition of the company at that time?

(Testimony of James Anthony Allen.)

A. It was. I say, it was if the audits are right as we now see them. I didn't see them at that time, and I had no fear but what there would be.

Q. Did you know at that time how much money Mr. Keane was putting into the property from the Independence Lead Mines Company treasury?

A. No, I did not. I didn't have the exact knowledge of it.

Q. Did he ever inform you how much he was putting in there?

A. He said, I don't know any exact amount, but was putting it in. On two or three times, or many times, I had asked him to complete these things, to complete the corporations, to have an audit of what we were doing each year. He would always say "Well, as soon as I get through with the Kingsbury-Marquart litigation" or something else, not that there was any concern about it, but that he was just too busy, and we would have an audit of the Delaware and Independence, and he would just procrastinate on it.

Q. Now, during 1945, besides the funds that were going into the property at Neihart, Lexington Silver Lead, were you also putting some funds into that property, Mr. Allen?

A. Indeed I was; in 1945?

Q. Yes, in 1945. [1135]

A. Yes.

(Whereupon, four checks, Allen to Montana and Keane, 1945, were marked Defendant's Exhibit X for identification.)

(Testimony of James Anthony Allen.)

Q. I'll hand you Defendant's exhibit for identification marked X, and ask you if you recognize those, Mr. Allen? A. Yes, I do.

Q. Examine them, please. A. Yes.

Q. Will you state what they are?

A. Well, there's one check of a thousand dollars on the Old National Bank, the J. A. Allen account, to the Montana Leasing Company; a check to F. C. Keane for \$1500.00, J. A. Allen personal account, the Old National Bank; another check to F. C. Keane for \$1,000.00 on my personal account in the Old National Bank; another check for a thousand dollars to F. C. Keane; these checks were for the use of the Montana Leasing Company.

Q. Were they given to the Montana Leasing Company for deposit?

A. Well, they were deposited through Keane's office for the Montana, and I see his endorsement on them.

Q. And does the total appear on there of those checks, Mr. Allen? A. Yes, there is \$4500.00.

Q. Of your personal checks? [1136]

A. Personal checks. There's another thousand that the bank record will show, but the slip hasn't—we haven't been able to find it. My bookkeeper left a month ago for the Army.

(Whereupon, fifteen checks, Allen to Lexington Silver, 1946, were marked Defendant's Exhibit Y for identification.)

Q. I'll hand you, Mr. Allen, what is marked for

(Testimony of James Anthony Allen.)

identification Defendant's Y, and I'll ask you if you recognize what that is?

A. Yes; these are checks on my personal account payable to the Lexington Silver Lead Mines, Inc., for the year 1946.

Q. Are each and all of those checks from your account, as you say, to Montana Leasing or Lexington Silver Lead?

A. They are; my personal account.

Q. Your personal checks; and have you tabulated the total of those personal checks, Mr. Allen?

A. There's a total of \$70,000.

Q. \$70,000?

A. \$70,000. There's \$5,000 more in two checks, one dated August 17, 1946, for \$3,000, and \$2,000 to Lexington on November 19, 1946.

Q. Those checks are not contained in this?

A. No, but it does show on the bank statement, so it would be a total of \$75,000. [1137]

Q. You haven't been able to find those two checks?

A. They're in the office somewhere, or somewhere in the files here.

Q. But the total of that amount and the amount you've shown here was what?

A. \$75,000, plus the additional one for 1945, that makes \$6,000 for 1945 and \$75,000 for 1946.

(Whereupon, fifty-eight checks, Allen to Lexington Silver, 1947, were marked Defendant's Exhibit Z for identification.)

(Testimony of James Anthony Allen.)

Q. Now I'll hand you at this time, Mr. Allen, Defendant's for identification Z, and I'll ask you if you'll examine those, and if you recognize them, and tell us what they are?

A. These are additional checks on my personal account to the Lexington Silver Lead Mines in the year of 1947.

Q. And what is the total as you've tabulated it from your personal funds to the Lexington Silver Lead Mines in 1947? A. \$76,000.

(Whereupon, twenty-six checks, Allen to Lexington Silver, 1948, were marked Defendant's Exhibit AA for identification.)

Q. Mr. Allen, I will now hand you Defendant's for identification marked AA, and ask you to examine it and tell me what that is; what they are, I should say? [1138]

A. These are personal checks to the Lexington Silver Lead Mines.

Q. And what's the total?

A. For the year 1948, the total is \$27,500.

Q. And this is your own personal funds?

A. That's right.

Q. To the Lexington Silver Mines.

(Whereupon, sixty-five checks, Allen and Lexington Silver to Mullen and Grismer, 1947, were marked Defendant's Exhibit BB for identification.)

Q. Handing you Defendant's for identification

(Testimony of James Anthony Allen.)

BB, Mr. Allen, I'll ask you if you will examine these and tell us what they are?

A. These are checks, excepting this photostat, on the Lexington Silver Lead Mines account, signed by me mostly; there's a trustee check here too—payable to William Mullen and J. V. Grismer, and in this case the Pilot Silver Lead Mines, Inc., totalling for Grismer \$15,147.85, to Mullen \$5,815.03, Pilot Silver Lead Mines, and to Grismer during 1946, \$7,072.50, and these are for the——

The Court: What year did you say that was?

A. 1946.

The Court: For Grismer?

A. That's right; for 1947, \$8,075.35, making a total of \$15,147.85. [1139]

Q. To Grismer?

A. To Grismer and Mullen for the Pilot and the Extension companies.

Q. For the Pilot and Lucky Friday Extension?

A. For the Pilot and Lucky Friday Extension.

Q. Paid by you? A. Paid by me.

Q. And this is a photostat of the government's Exhibit for \$7,000, heretofore introduced?

A. It is.

Q. And paid by you to the Pilot Silver Lead Mines, Inc.? A. That's right.

Q. And is that a photostat of the exhibit which appears? A. Yes, sir.

The Court: That's paid to the Pilot?

A. Paid to the Pilot Silver Lead, \$7,000.

Q. Now, this \$4500.00, Mr. Allen, and the

(Testimony of James Anthony Allen.)

\$70,000, and the \$76,000, and the \$27,500, then, were paid by you into the Lexington account?

A. That's right.

Q. And this amount appearing here, totalling \$15,000 to Grismer, and the check to Pilot, and to Mullen, was paid to the Pilot Silver Lead Mines and Lucky Friday Extension by you?

A. That's right. [1140]

Mr. Etter: At this time, your Honor, I'd like to move that the defendant's exhibits Y, X, AA, Z, and BB be admitted in evidence.

Mr. Erickson: May I ask a question on voir dire?

The Court: You may.

Voir Dire Examination

By Mr. Erickson:

Q. On Exhibit BB, Mr. Allen, BB is a series of checks on Lexington Silver Lead signed by Beatrice McLean; what do those checks represent?

A. Those are payments to Mullen and Grismer.

Q. For what?

A. For the benefit of the Pilot and Extension; they were in the employ. The reason for that was that when we came into the companies they were without funds. Keane had permitted the charter and the articles to lapse. The work in making the filings of the Social Security and withholding and everything else would be too much, so it was all carried in the one account, for which that was

(Testimony of James Anthony Allen.)

making its regular monthly remittances on Social Security.

Q. This was Lexington money, then, paid to Pilot?

A. It was my personal money to Lexington, used for that, and to save the bookkeeping cost done in that manner.

Q. Your personal money, although they're Lexington Silver Lead checks?

A. Well, I wouldn't say that, Mr. Erickson. That's true, but [1141] I've put the money into the Lexington.

Mr. Erickson: I see. We have no objections to any of the exhibits.

The Court: Exhibits Y, X, AA, Z, BB, which have been offered, are admitted; there's no objection.

(Whereupon, Defendant's Exhibits X, Y, Z, AA and BB for identification were admitted in evidence.)

Direct Examination
(Continued)

By Mr. Etter:

Q. To clarify one point, the part of Exhibit BB, Mr. Allen, which appears at the top of the checks, and which you said is a photostat, I'll hand you now the Plaintiff's Exhibit No. 18, and ask if that is a photostat of that self-same check which is also in the evidence? A. Yes, it is.

Q. All right. Mr. Allen, I'd like to hand you

(Testimony of James Anthony Allen.)

the defendant's Exhibit 8——

The Court: I don't think so; that must be M.

Q. Defendant's Exhibit M, excuse me, and ask if you recognize that? A. Yes, I do.

Q. And I'll ask you to turn the page. Do you recognize either of those signatures?

A. I recognize F. C. Keane's, but I don't recognize this as my signature, J. A. Allen.

Q. All right. Do you recall the first time that you ever saw [1142] this instrument that I have here marked Defendant's Exhibit M?

A. Yes. I can't say the exact date.

Q. When was it, Mr. Allen, approximately, that you first saw this exhibit?

A. It would be March of '47.

Q. Are you sure—you're sure of that month, so that you think it was about March?

A. Quite sure it was March; could be February; in fact, I believe——

Q. What were the circumstances concerning your first view of this document marked Defendant's Exhibit M?

A. Keane called me from the Davenport Hotel to my office. I was at my office. We hadn't been speaking; I was surprised at the call. He called me over to the room, and said he was subpoenaed down here by the Securities and Exchange Commission, he and Mr. Randall; that Randall had testified in the morning, and that Mrs. Randall had called him and told him that Randall couldn't discuss anything with him, he was put under oath

(Testimony of James Anthony Allen.)

not to discuss things with him. He had that in his suitcase, a small overnight bag which was lying on the floor and open. He pulled it out; he says "I think I can take care of these things if you'll sign this," so I looked at it and read it. He had the partnership aspect of it there. I said "That's a well-written [1143] note, and I believe that is the terms of it, but this was never a partnership," and that I would execute the note if he would prepare the corporations and make it a corporation instrument; that at no time was it ever a partnership, and that is the first time that he had ever raised the question of partnership.

Q. With you? A. With me.

Q. What did he say when you told him that, Mr. Allen?

A. He threw it back in the suitcase, and he says "I'll take care of it," or do something; I can't remember just what he did say.

Q. Did you have any further conversation with him? A. No.

Q. Now, when he showed you this document were there any names appearing where the names now appear on the second sheet?

A. No, there was no names whatever on it.

Q. And it was in blank? A. In blank.

Q. And that was in March of 1947?

A. Yes, February or March.

Q. All right. Now, Mr. Allen, I would like to show you the Plaintiff's Exhibit No. 105, which

(Testimony of James Anthony Allen.)

appears to be a check from J. A. Hogle and Company. I'll ask you to look at the front of that check. I'll ask you to turn it over now, [1144] Mr. Allen, and will you look at that signature, "J. A. Allen"? Is that your signature, Mr. Allen?

A. No, it is not my signature.

Q. Did you ever sign your signature the way that appears?

A. I have never signed the signature and I have never seen that check until it was introduced here yesterday.

Q. Now, as relates to the signature which appears upon the Defendant's Exhibit M, as related to the signature appearing upon the Plaintiff's Exhibit 105, what have you to say?

A. It looks like the——

Mr. Erickson: Is this for—well, I think the witness is competent to state. I'll withdraw any objection.

A. Well, it's not my signature on either instrument. The signature on the check has the appearance of being identical with that on the note that was signed by F. C. Keane; the dots would indicate that.

Q. I'll ask you, Mr. Allen, directing your attention to the Plaintiff's Exhibit No. 105, if you received this check in the mail?

A. No, I did not. I have never seen the check until yesterday.

Q. And I'll ask you, Mr. Allen, if you personally

(Testimony of James Anthony Allen.)

sold any stock through J. A. Hogle and Company and delivered it to them a few days prior to this date marked on this Exhibit 105, being the date of December 3,—well, withdraw that— [1145] I'll ask you whether on or about November 29 of this year 1945, you delivered any stock certificates to J. A. Hogle and Company for sale? A. I did not.

Q. Now, you stated that from refreshing your memory with those records of yours, that there was, I think, a \$70,000 operating loss in 1945, approximately? A. Yes.

Q. Have you the record for 1946 available there?

A. Yes, I have.

Q. And what does it indicate, Mr. Allen?

A. The total cost of the mine operation in 1946 for labor and supplies, road maintenance, everything, was \$119,004.30; the production was \$62,709.03, leaving a development cost or capital investment of \$56,297.27.

Q. That's in 1946? A. That's right.

Q. Now, was there any necessity during that year from those records, for "bailing out" as Mr. Keane stated, Mr. Allen?

A. Never, never to my—no, absolutely, there was not.

Q. And had you discussed further with Mr. Keane the Independence contribution during this year?

A. Yes. The Independence, he was selling large blocks of the Clayton stock for the purpose of investing it in Montana. [1146]

(Testimony of James Anthony Allen.)

Q. Is that what he told you?

A. Yes, and had sold lots of it, and was doing it then, in the months of June and July and August.

Q. Now, had you at that time made any examination of the records, that is, the bank records that were maintained at that time in the bank at Wallace, Idaho?

A. No, because the question was never——

Q. Did you ever raise it with Mr. Keane?

A. No, the condition didn't exist to where it was necessary.

Q. In 1946? A. That's right.

Q. Now, when was it that you first had any difficulty with Mr. Keane?

A. Well, during the month of August a suspicion become with Keane, beginning in July, for his failure to pay small accounts of the Pilot.

Q. What year is that? A. 1946.

Q. All right.

A. In the months of September and October I was called upon and did put into the Lexington Silver Lead account approximately \$20,000 or \$25,000——

The Court: When was this?

A. The month of September and October. These checks will show. Prior to that time, and during the course of the— [1147] oh, from early January of 1946, Keane would make appointments and wouldn't keep them; he'd be evasive. He was drinking some, but not any more than the ordinary——

(Testimony of James Anthony Allen.)

Horning or the rest of them, as far as I could detect. On many occasions Mr. Callahan was after me for to complete this re-organization of the Lexington so that the titles and so forth would be in good shape on them. There's 1500 Lexington stockholders that own the plant and equipment.

Q. Well, did you call upon Mr. Keane?

A. I did, after several times, and got to the point of exasperation; I went down to his Louse sometime in October.

Q. Before that had you called upon him by phone or trip or otherwise, before that incident?

A. Oh, I made repeated trips to Wallace, and would wait for him; he'd make an appoin'tment, and I'd wait maybe two or three days; he'd be in town, and say "Well, I'm too busy now; see you at 8 o'clock tonight" then he wouldn't be there, and change it to 9 o'clock in the morning. That went on for quite a while.

Q. You were here in the courtroom when you heard Mr. Keane testify that you came down to his house at 3 o'clock in the morning on December 26; state whether or not that is correct, as to the date and time?

A. That is an absolute falsehood. In the first place, it would be the day after Christmas; I wouldn't be up to [1148] Wallace on Christmas night. I went to Mr. Keane's house perhaps in October, and went down to his house at 9:30 in the evening, after he had an appointment with me in

(Testimony of James Anthony Allen.)

the afternoon and for two days previous, and he would not show up. I was not intoxicated, but I was in more of a pleading mood to get him to do something, to make a disclosure of what was going on with these corporations.

Q. What did you say to him?

A. I asked his wife, if she had any influence with him, I wished she would use it to see what was wrong with these corporations, and what could be done.

Q. Have you been acquainted with Mr. Keane's wife prior to the time you made this trip?

A. Yes, Mr. Keane's wife was secretary in the Callahan Consolidated when I first became associated with it, before she was married to Mr. Keane.

Q. All right, what conversation further did you have with Mr. Keane?

A. Well, there was considerable conversation; it was all relating to if he would make a disclosure, which he said he would, and he got sore because I come down there and perhaps asked his wife to use her influence with him, that the bills weren't being paid, and Joe had been after him, and he agreed then he would do it if we'd give him some time.

Q. Did you leave then?

A. I left about 10 o'clock or 10:15.

Q. You didn't see him that evening again?

A. I didn't see him at all that evening, no.

Q. Now, you heard Mr. Keane testify that you made a statement there that "I've got \$200,000,

(Testimony of James Anthony Allen.)

and you haven't," I don't know what it was; "You'd better turn everything over to me, because I've got the \$200,000." What have you to say about that statement?

A. Well, it's almost unanswerable. Of course I didn't say it. I know of no purpose or reason for saying it. We certainly wanted him to turn over things to complete these corporations, but it was for the purpose of turning over what titles there might be in his name, or contracts, but not for the sake of giving him any money, or that I had \$200,000 and that I would take it.

Q. There was nothing of that kind said?

A. Absolutely not.

Q. And at any later date that you met Mr. Keane was there anything ever said about that supposed statement that you made? Did Mr. Keane ever mention it to you?

A. Never. The first I heard of it was right here, the first time I ever heard such a statement.

The Court: Are you through with this phase?

Mr. Etter: Yes, with this phase. [1150]

* * *

(Whereupon, at 4:45 o'clock p.m., the Court took a recess in this cause until Thursday, June 16, 1949, at 10 o'clock a.m.)

Spokane, Washington

Thursday, June 16, 1949, 10 o'clock a.m.

(Ninth day of trial)